United Nations A/64/205–S/2009/394

General Assembly
Security Council

Distr.: General
31 July 2009

Original: English

General Assembly
Sixty-fourth session
Item 76 of the provisional agenda*
Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Security Council
Sixty-fourth year

Report of the International Tribunal for the Former Yugoslavia

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and the members of the Security Council the sixteenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, submitted by the President of the International Tribunal in accordance with article 34 of the statute of the Tribunal (see S/25704 and Corr.1, annex) which states that:

> "The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly".

* A/64/150.

09-43587 (E) 200809

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Letter of transmittal

31 July 2009

Excellencies,

I have the honour to submit the sixteenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, dated 31 July 2009, to the General Assembly and the Security Council, pursuant to article 34 of the statute of the International Tribunal.

Please accept, Excellencies, the assurances of my highest consideration.

(*Signed*) Patrick L. **Robinson**
President

President of the General Assembly
United Nations
New York

President of the Security Council
United Nations
New York

Sixteenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Summary

The sixteenth annual report of the International Criminal Tribunal for the Former Yugoslavia covers the period from 1 August 2008 to 31 July 2009.

During the reporting period, the Tribunal continued to expedite its proceedings. The Appeals Chamber delivered three judgements involving four accused, bringing to 86 the number of cases fully completed. The Trial Chambers delivered three judgements involving nine accused and at their peak ran eight trials simultaneously in its three courtrooms, taking advantage of interstices in trial schedules.

At the close of the reporting period, appeal proceedings are ongoing for 12 persons, and 21 accused are currently on trial. Four accused remain at the pretrial stage. Unfortunately, two more accused remain at large: Ratko Mladić and Goran Hadžić. The failure to arrest the remaining two fugitives remains a grave concern to the Tribunal.

The Tribunal hosted an increasing number of working visits and training programmes for courts in the region in order to ensure the preservation of its legacy through the prosecution of war crimes cases by domestic courts. The Tribunal published a manual of its developed practices for use by other domestic and international courts with the assistance of the United Nations Interregional Crime and Justice Research Institute. The Tribunal also undertook a needs assessment of the countries of the former Yugoslavia and is developing a number of project proposals to fulfil identified, existing needs in partnership with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) and with UNICRI.

Patrick Robinson (Jamaica) was elected President of the International Tribunal at a plenary convened on 4 November 2008, and O-Gon Kwon (Republic of Korea) was elected Vice-President. The Registrar, Hans Holthuis, finished his term of office on 31 December 2008, and a new Registrar, John Hocking, was sworn in on 19 May 2009. Serge Brammertz continued as Prosecutor, following his appointment in November 2007 and his taking up office on 1 January 2008.

Over the reporting period, the Office of the Prosecutor made progress towards the completion of the Tribunal's mandate at both trial and appellate level. The Office of the Prosecutor continued to further develop interaction with the authorities of the States of the former Yugoslavia to encourage cooperation with the Tribunal and support domestic war crimes prosecutions.

The Registry continued to play a crucial role in the provision of administrative and judicial support. During the reporting period, the Registrar, under the authority of the President, provided operational support to the Chambers and the Office of the Prosecutor and managed the Tribunal in all administrative areas. The Registry Advisory Section for Legal and Policy Matters provided advice to the Registrar, Deputy Registrar, and the Administration of the Tribunal on a variety of legal and

policy matters. The Communications Service carried out a diverse range of activities with a view to increasing the profile of the Tribunal and bringing its judgements to the relevant communities. The Court Management and Support Services Section supported up to eight trials, as well as numerous pretrial, contempt and appeals hearings. The Conference and Language Services Section continued to provide the required interpretation, translation and court reporting services. The Victims and Witnesses Section facilitated 727 witnesses travelling to The Hague to give evidence. The Office for Legal Aid and Detention Matters serviced over 500 defence team members in cases in pretrial, trial and appellate proceedings. The United Nations Detention Unit continued to operate at a high level of activity, serving the judicial process on a daily basis and providing secure custodial care to all detained persons. The Administration Support Services Division coordinated the preparation of the revised estimates for the biennium 2008-2009 and the proposed programme budget for the biennium 2010-2011.

To date, the Tribunal has concluded proceedings against 120 accused out of the 161 indicted. The report that follows details the activities of the Tribunal during the reporting period and demonstrates the Tribunal's focus on its goal of completing its proceedings as soon as possible without sacrificing due process.

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I. Introduction

1. The sixteenth annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 outlines the activities of the Tribunal for the period from 1 August 2008 to 31 July 2009.

2. During the reporting period, the Tribunal took steps towards implementing its completion strategy which the Security Council endorsed in resolution 1503 (2003). Judge Fausto Pocar (Italy) served as President, until his replacement on 17 November 2008, on the election of Judge Patrick Robinson (Jamaica) by the judges in plenary on 4 November 2008. Judge Kevin Parker (Australia) was replaced as Vice-President by the election of Judge O-Gon Kwon (Republic of Korea) at the same time.

3. To date, the Tribunal has concluded proceedings against 120 persons out of a total of 161 indicted accused. The Tribunal's three Trial Chambers continued to function at full capacity, running up to eight trials simultaneously in its three courtrooms. The Trial Chambers rendered three judgements involving nine accused and heard four contempt cases. The Appeals Chamber also expedited its work, issuing 36 decisions on interlocutory appeal, one decision on review, two contempt judgements and three appeal judgements on the merits.

4. The President, Prosecutor and Registrar developed individual and Tribunal-wide programmes aimed at increasing the capacity of local judiciaries to effectively prosecute and try war crimes cases. The Tribunal joined with other organizations — the United Nations Interregional Crime and Justice Research Institute (UNICRI), the Office for Democratic Institutions and Human Rights, and the Organization for Security and Cooperation in Europe (OSCE) — in developing knowledge transfer tools.

5. The Tribunal also focused its efforts on developing its downsizing strategy, which will begin to be implemented during the next biennium. As part of this strategy, the Tribunal assessed its remaining workload and determined the necessity of redeploying resources to the Appeals Chamber. This strategy is contained in the proposed programme budget for the biennium 2010-2011 and will expedite the work of the Tribunal and save significant resources.

II. Activities involving the entire Tribunal

A. President

6. President Robinson's presidency commenced with a detailed assessment of the trial and anticipated appellate workload of the Tribunal.

1. Internal reforms

7. The influx of contempt proceedings, particularly those that relate to ongoing trials, has had a significant impact on the expeditious completion of those trials. As a measure to minimize their impact on the trial proceedings, some Chambers have attempted to deal with contempt allegations as part of and during their trial proceedings. In April, President Robinson established a Working Group to assess the

procedural and substantive aspects of contempt proceedings and to recommend methods of expediting their adjudication. The report and recommendations of the Working Group were submitted in July 2009. Moreover, the Rules of Procedure and Evidence (Rules) were amended in order to reduce certain time limits in contempt cases, in order to further expedite such proceedings.

2. Capacity-building and legacy

8. President Robinson built upon the work of his predecessor, Judge Pocar, making the capacity-building of national jurisdictions a priority of the Tribunal's legacy strategy. During the reporting period, major results were achieved and new activities were initiated in order to secure the continuation of the Tribunal's work through the prosecution of war crimes cases by domestic courts.

9. In May 2009, the Tribunal published a manual on its developed practices in cooperation with UNICRI, providing for the first time a comprehensive description of the Tribunal's operating practices as seen from the inside. The manual, which has been made available in English and Bosnian/Serbian/Croatian, allows judicial practitioners in the former Yugoslavia, as well as globally, to benefit from the Tribunal's experience in developing procedures for the efficient and fair processing of international crimes.

10. The Tribunal identified a number of priority activities through a needs assessment and consultation process conducted in cooperation with the Office for Democratic Institutions and Human Rights. Together with the Office and UNICRI, the Tribunal is preparing to undertake major projects aimed at further developing the ability of national jurisdictions to utilize the Tribunal's legal and material legacy for their own proceedings. The projected tasks include the production of transcripts from the Tribunal's trials in Bosnian/Croatian/Serbian, legal studies linking national criminal codes to international case law, and preparations for the establishment of information centres under local ownership in the former Yugoslavia, enabling wide access for a variety of users to the Tribunal's public records.

3. Diplomatic relations and other representation

11. During the reporting period, both Presidents were actively involved in cooperation and outreach activities to secure support for the Tribunal's work and increase its international profile.

12. On 13 October 2008, former President Pocar addressed the General Assembly regarding the Tribunal's fifteenth annual report (A/63/210-S/2008/515).

13. On 2 December 2008, President Robinson, Prosecutor Serge Brammertz, and former Registrar Hans Holthuis held a biannual periodic briefing for the diplomatic community in The Hague. More than 60 ambassadors and members of the diplomatic community attended the meeting, which focused on developments at the Tribunal and progress made towards the completion of its mandate. On 12 December, President Robinson addressed the Security Council regarding the Tribunal's tenth completion strategy report.

14. On 14 February 2009, President Robinson delivered a speech at Nova Southeastern University in Davie, Florida, United States of America. In his speech, he addressed the interaction of legal systems in the work of the Tribunal.

15. On 2 April 2009, President Robinson delivered a speech at a conference entitled "The unfinished business of the United Nations criminal tribunals of the former Yugoslavia and Rwanda: the future role of the EU and its member States" before the European Parliament in Brussels. He discussed the key challenges of completion and post-closure for the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. On 6 April, the Tribunal's public Court Records Database was launched on the Tribunal's website. On 27 April, President Robinson received at the Tribunal the United States Ambassador-at-Large for War Crimes. The President, the Prosecutor and the Registrar updated the Ambassador on a range of issues, including the Tribunal's achievements to date, the implementation of the completion strategy and plans for preserving the Tribunal's legacy.

16. On 12 May 2009, President Robinson delivered the keynote speech at the annual Human Dimension Seminar organized by OSCE. The President discussed the Tribunal's role in strengthening the rule of law in the former Yugoslavia and the importance of the independence of the judiciary. On 19 May, the President conducted the swearing in proceedings of the Tribunal's new Registrar. On 28 May, the President spoke at the launch of the Tribunal's Manual on Developed Practices, a publication aimed at preserving the Tribunal's legacy and aiding jurisdictions adjudicating international crimes. Also on 28 May, the President, the Prosecutor and the Registrar held a briefing for the diplomatic community in The Hague, addressing more than 50 embassy representatives and officials from international organizations on developments at the Tribunal and progress made toward the implementation of its completion strategy.

17. In June 2009, President Robinson conducted his first official visit to the region of the former Yugoslavia since being elected as the Tribunal's President. The President met with colleagues from local judiciaries in Croatia, Bosnia and Herzegovina and Slovenia, as well as representatives of Governments and civil society. The President delivered the keynote addresses at two conferences in Dubrovnik and Sarajevo, met with the mayors of the two cities, and also conducted a visit to the President of Slovenia in Ljubljana. On 4 June, the President addressed the Security Council regarding the Tribunal's eleventh completion strategy report. The President highlighted the organization's successes and key challenges ahead. On 9 June, the President together with UNICRI, launched the Tribunal's Manual on Developed Practices during a side event to a meeting of the Assembly of States Parties to the International Criminal Court. On 15 June, the President delivered the opening speech at a conference organized by UNICRI and the Tribunal, where the translation of the Manual on Developed Practices into the languages of the region was launched. On 19 June, the President met with the Prime Minister of the former Yugoslav Republic of Macedonia. On 25 June, the President was the keynote speaker at the Inaugural Conference of the Caribbean Association of Judicial Officers, having received an invitation from the President of the Caribbean Court of Justice in Port of Spain. He spoke about measures adopted to increase the efficiency of proceedings at the Tribunal, their impact on the fairness of trials, and the applicability of these measures to Caribbean jurisdictions.

18. In July 2009, President Robinson made a working visit to the Supreme Court of Serbia and met with the President of the Court, among others. The purpose of the visit was to exchange experiences in the prosecution of persons accused of committing serious violations of international humanitarian law.

4. Judicial activity

19. By virtue of the powers vested in him by the statute, the Rules, and the Practice Directions of the Tribunal, the President issued numerous orders assigning cases to Chambers; reviewed several decisions of the Registrar; issued orders designating the State in which Pavle Strugar, Stanislav Galić, Milan Martić, Momčilo Krajišnik and Dragan Jokić were to serve their sentences; granted five requests for early release; and rejected an application for pardon or commutation of sentence.

B. Bureau

20. Pursuant to rule 23, the Bureau is composed of the President, the Vice-President and the presiding judges of the Trial Chambers. The President consulted the Bureau on issues relating to the functioning of the Tribunal and on requests for early release or commutation of sentence.

C. Coordination Council

21. Pursuant to rule 23 bis, the Coordination Council consists of the President, the Prosecutor and the Registrar. During the reporting period, the Council met regularly to discuss, inter alia, the Tribunal's completion strategy, staff retention, translation priorities, legacy activities, communications policy, and the work of the Security Council Working Group on the ad hoc Tribunals with respect to the Tribunal's residual mechanism.

D. Plenary sessions

22. During the reporting period, the judges held one regular plenary session, on 22 July 2009, and four extraordinary plenary sessions on 25 August, 2 October and 4 November 2008 and 24 March 2009. At the extraordinary plenary session of 4 November 2008, Judge Patrick Robinson (Jamaica) and Judge O-Gon Kwon (Republic of Korea) were elected to the positions of President and Vice-President of the Tribunal, respectively, and a new rule 45 ter was adopted, allowing for the assignment of counsel to an accused in the interests of justice. At the 22 July 2009 plenary session, the Rules were amended in order to reduce certain time limits in contempt cases, in order to further expedite such proceedings.

E. Rules Committee

23. Following the election of a new President and Vice-President, the judicial membership of the Rules Committee was re-composed as follows: Judge Carmel Agius (Chair), President Patrick Robinson, Vice-President O-Gon Kwon, and Judges Alphons Orie, Kevin Parker and Christoph Flügge. The non-voting members include the Prosecutor, the Registrar and a representative of the Association of Defence Counsel. During the reporting period, the Rules Committee met on the following dates to discuss proposals to the Rules and make recommendations to the Judges: 1 September and 16 October 2008, and 11 and 22 June 2009.

F. Residual mechanism

24. The Tribunal continued to respond diligently to requests for information from the Office of the Legal Counsel with respect to the development of a residual mechanism, as the Tribunal draws closer to the completion of its mandate. In this regard, the Tribunal provided information, for inclusion in the Secretary-General's report on the residual mechanism to the Security Council, about the mechanism's possible functions, tentative staffing estimates, structure and location. On 2 October 2008, the Security Council Working Group on the ad hoc Tribunals made an on-site visit to the Tribunal and met many judges and staff members, in order to gain a more comprehensive understanding of the areas with which the residual mechanism will have to deal.

III. Activity of Chambers

A. Composition of the Chambers

25. Today, the Tribunal has 27 judges from 25 countries. The Chambers are composed of 13 permanent judges, two permanent judges from the International Criminal Tribunal for Rwanda serving in the Appeals Chamber and 12 ad litem judges.

26. The permanent judges are Patrick Robinson (President, Jamaica), O-Gon Kwon (Vice-President, Republic of Korea), Kevin Parker (Presiding Judge, Australia), Iain Bonomy (Presiding Judge, United Kingdom), Alphons Orie (Presiding Judge, The Netherlands), Fausto Pocar (Italy), Liu Daqun (China), Theodor Meron (United States of America), Carmel Agius (Malta), Jean-Claude Antonetti (France), Christine Van Den Wyngaert (Belgium), Bakone Justice Moloto (South Africa) and Christoph Flügge (Germany). The permanent judges from the International Criminal Tribunal for Rwanda serving in the Appeals Chamber are Mehmet Güney (Turkey) and Andrésia Vaz (Senegal). Judge Mohamed Shahabuddeen (Guyana), who served in the Appeals Chamber, resigned during the reporting period. Judge Wolfgang Schomburg (Germany), who served in the Appeals Chamber, resigned during the reporting period and was replaced by Judge Christoph Flügge (Germany).

27. During the reporting period the following have served as ad litem judges: Krister Thelin (Sweden), Janet Nosworthy (Jamaica), Frank Höpfel (Austria), Árpád Prandler (Hungary), Stefan Trechsel (Switzerland), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Ali Nawaz Chowhan (Pakistan), Tsvetana Kamenova (Bulgaria), Kimberly Prost (Canada), Ole Bjørn Støle (Norway), Frederik Harhoff (Denmark), Flavia Lattanzi (Italy), Pedro David (Argentina), Michèle Picard (France), Uldis Kinis (Latvia), Elizabeth Gwaunza (Zimbabwe) and Melville Baird (Trinidad and Tobago).

28. The following judges served in the Trial Chambers during the reporting period: Judges Robinson (presiding), Agius (presiding), Parker (presiding), Bonomy (presiding), Orie (presiding), Kwon, Antonetti (presiding), Van Den Wyngaert, Moloto (presiding), Flügge, Thelin, Nosworthy, Höpfel, Prandler, Trechsel, Mindua, Chowhan, Kamenova, Prost, Støle, Harhoff, Lattanzi, David, Picard, Kinis, Gwaunza and Baird.

29. The Appeals Chamber is composed of Judges Robinson (presiding), Güney, Pocar, Liu, Vaz, Meron and Agius.

B. Principal activity of the Trial Chambers

1. Trial Chamber I

(a) Pretrial

30. There are currently no pretrial cases pending before the Trial Chamber I.

(b) Trial

Gotovina, Čermak and Markač

31. The accused are charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Croatia in 1995. The Trial Chamber is composed of Judges Orie (presiding), Kinis and Gwaunza. Trial commenced on 10 March 2008.

Perišić

32. Momčilo Perišic is charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Sarajevo and Srebrenica (Bosnia and Herzegovina), as well as in Zagreb (Croatia) between August 1993 and November 1995. The Trial Chamber is composed of Judges Moloto (presiding), David and Picard. Trial commenced on 2 October 2008.

J. Stanišić and Simatović

33. Jovica Stanišić and Franko Simatović are charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Croatia and Bosnia and Herzegovina between April 1991 and December 1995. The Trial Chamber is composed of Judges Orie (presiding), Picard and Gwaunza. Trial commenced on 28 April 2008, but was adjourned by order of the Appeals Chamber of 16 May 2008 owing to the health of Jovica Stanišić. Trial re-commenced on 2 June 2009.

Hartmann

34. Florence Hartmann is charged with contempt of the Tribunal for disclosing two confidential decisions of the Appeals Chamber in her book entitled *Paix et châtiment*, published by Flammarion, and in an article entitled "Vital genocide documents concealed", published by the Bosnian Institute. The Trial Chamber is composed of Judges Moloto (presiding), Güney and Liu. Trial commenced on 15 June 2009, and closing arguments were heard on 3 July 2009. The judgement will be delivered in due course.

Delić

35. Rasim Delić was charged with violations of the laws or customs of war allegedly committed between July 1993 and December 1995 in Bosnia and Herzegovina. The Trial Chamber was composed of Judges Moloto (presiding),

Harhoff and Lattanzi. Judgement was rendered on 15 September 2008. Rasim Delić was sentenced to three years of imprisonment.

Haraqija and Morina

36. Astrit Haraqija and Bajrush Morina were charged with contempt of the Tribunal for alleged intimidation and interference with a protected witness. The Trial Chamber was composed of Judges Orie (presiding), Van den Wyngaert and Moloto. Judgement was rendered on 17 December 2008. Astrit Haraqija was sentenced to five months of imprisonment. Bajrush Morina was sentenced to three months of imprisonment.

2. Trial Chamber II

(a) Pretrial

Tolimir

37. Zdravko Tolimir is charged with genocide, conspiracy to commit genocide, crimes against humanity and violations of the laws or customs of war allegedly committed in Bosnia and Herzegovina in 1995. The Trial Chamber is composed of Judges Agius (presiding), Kwon and Prost (pretrial judge). The trial is expected to commence in December 2009.

(b) Trial

Popović et al.

38. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin and Vinko Pandurević are charged with genocide, conspiracy to commit genocide, crimes against humanity, and violations of the laws or customs of war. Radivoje Miletić and Milan Gvero are charged with crimes against humanity and a violation of the laws or customs of war. The crimes charged were allegedly committed in Bosnia and Herzegovina in 1995. The Trial Chamber is composed of Judges Agius (presiding), Kwon, Prost and Støle (reserve judge). Trial commenced on 14 July 2006, and proceedings in the case will be completed soon.

Đorđević

39. Vlastimir Đorđević is charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Kosovo in 1999. The trial commenced on 27 January 2009. The Trial Chamber is composed of Judges Parker (presiding), Flügge and Baird. The Prosecution is currently presenting its case-in-chief.

Jokić

40. Contempt proceedings against Dragan Jokić were initiated following his refusal to testify in the case of *Prosecutor v. Popović et al.* The Trial Chamber issued an order in lieu of indictment on contempt on 1 November 2007. Three hearings were held, in which Jokić led evidence from two witnesses, tendered several exhibits, and cross-examined an expert called by the Chamber. In a Judgement delivered on 27 March 2009, Jokić was found guilty of contempt of the Tribunal and was sentenced to four months of imprisonment.

Šešelj

41. On 21 January 2009, Trial Chamber II issued an order in lieu of indictment charging Vojislav Šešelj with contempt for having disclosed, in a book authored by him, confidential information in violation of orders granting protective measures to three witnesses as well as excerpts of one of their written statements. An *amicus curiae* Prosecutor was assigned by the Acting Registrar on 11 February 2009. At his initial appearance held on 6 March 2009, Vojislav Šešelj pleaded not guilty. The trial was held on 29 May 2009. The judgement was rendered on 24 July 2009, in which Šešelj was convicted of contempt of the Tribunal and sentenced to 15 months of imprisonment.

3. Trial Chamber III

(a) Pretrial

Karadžić

42. Radovan Karadžić is charged under 11 counts with genocide, crimes against humanity, and violations of the laws or customs of war allegedly committed in Bosnia and Herzegovina between 1992 and 1995. Following his arrest and transfer to the Tribunal on 30 July 2008, pleas of not guilty were entered on his behalf to all charges. The Trial Chamber is composed of Judges Bonomy (presiding), Flügge and Picard. A trial date has not yet been scheduled, but the pretrial conference is anticipated to be held in September 2009.

M. Stanišić and Župljanin

43. Mico Stanišic and Stojan Župljanin are both charged with 10 counts of crimes against humanity and violations of the laws or customs of war allegedly committed in April through December 1992 in Bosnia and Herzegovina. The Trial Chamber is composed of Judges Bonomy (presiding), Stole and Harhoff (pretrial judge). The pretrial conference is scheduled for 25 August 2009, and the commencement of trial has been tentatively scheduled for 31 August 2009.

(b) Trial

Šešelj

44. Vojislav Šešelj is charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Croatia, Bosnia and Herzegovina and Vojvodina (Serbia) between August 1991 and September 1993. The Trial Chamber is composed of Judges Antonetti (presiding), Harhoff and Lattanzi. The trial started on 7 November 2007. On 11 February 2009, the Trial Chamber, at the Prosecution's request, adjourned the hearing of certain witnesses called by the Prosecution, finding that hearing them at this time would jeopardize the integrity of proceedings and the security of the witnesses.

Milutinović et al.

45. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić were charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Kosovo in 1999. The Trial Chamber, composed of Judges Bonomy (presiding), Chowhan,

Kamenova and Nosworthy (reserve judge), issued its Judgement in the case on 26 February 2009, acquitting the first accused on all counts and convicting the others on some or all of the charges. Šainović, Pavković and Lukić were each sentenced to 22 years' imprisonment, and Ojdanić and Lazarević were each sentenced to 15 years' imprisonment.

Prlić et al.

46. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić are charged with grave breaches of the Geneva Conventions, crimes against humanity, and violations of the laws or customs of war allegedly committed between November 1991 and April 1994 in Bosnia and Herzegovina. The Trial Chamber is composed of Judges Antonetti (presiding), Trechsel, Prandler and Mindua (reserve judge). Trial commenced on 26 April 2006. The Prosecution case has ended, and the Chamber began hearing defence evidence on 5 May 2008. Prlić and Stojić have ended their cases, and on 5 May 2009, Praljak began to present his case.

M. Lukić and S. Lukić

47. Milan Lukić and Sredoje Lukić were charged with crimes against humanity and violations of the laws or customs of war allegedly committed in Bosnia and Herzegovina between June 1992 and October 1994. The Trial Chamber was composed of Judges Robinson (presiding), Van den Wyngaert and David. The trial commenced on 9 July 2008 and the evidence was completed on 19 May 2009. Judgement was delivered on 20 July 2009, sentencing Milan Lukić to life imprisonment and Sredoje Lukić to 30 years' imprisonment.

4. Referral Bench

48. There were no referral decisions during this reporting period; however, the Referral Bench continued to assess the previously referred cases through periodic progress reports submitted by the Prosecutor.

C. Principal activity of the Appeals Chamber

Interlocutory appeals

49. Thirty-six decisions on interlocutory appeals were issued in the following cases: *Karadžić* (8); *Gotovina et al.* (2); *Popović et al.* (4); *Prlić et al.* (14); *Šešelj* (1); *Tolimir* (2); *Perišić* (3); *Lukić and Lukić* (1); *Milutinović et al.* (1).

Request for review

50. One decision on review was issued in the *Naletilić* case.

Contempt appeal

51. Three Judgements on contempt were issued in the *Haxhiu*, *Jokić*, and *Haraqija* and *Morina* cases.

Appeals on the merits

52. The Appeals Chamber rendered three final Judgements in the cases of *Martić*, *Krajišnik* and *Mrkšić and Šljivančanin*. On 8 October 2008, the Appeals Chamber dismissed 9 of the 10 grounds of Milan Martić's appeal and affirmed the 35-year sentence of imprisonment handed down at trial. The Prosecution appeal regarding a specific question of law was granted, but the appeal against sentence was dismissed. On 17 March 2009, the Appeals Chamber granted a number of grounds and subgrounds of Momčilo Krajišnik's appeal, quashed a number of convictions, dismissed the remaining grounds of appeal, and issued a reduced sentence of 20 years' imprisonment (down from 27 years at trial). The Prosecution appeal against sentence in the case was dismissed. On 5 May 2009, the Appeals Chamber dismissed all grounds of appeal from both Mile Mrkšić and Veselin Šljivančanin. It affirmed Mrkšić's sentence of 20 years' imprisonment and granted the Prosecution's appeal in part and consequently increased Šljivančanin's sentence to 17 years' imprisonment, from the five years handed down at trial.

53. During the reporting period, new appeals from Judgement were filed before the Appeals Chamber in the *Delić* and the *Šainović et al.* cases. Three appeals are currently pending before the Appeals Chamber from the previous reporting period, in the *Dragomir Milošević*, *Haradinaj et al.* and *Boškoski and Tarčulovski* cases. Pre-appeal activity is ongoing in all five of these cases. A total of 46 pre-appeal decisions and orders were issued in the reporting period. The *Dragomir Milošević* case was heard on 21 July 2009, and the judgement is in preparation. The *Haradinaj et al.*, *Boškoski and Tarčulovski* and *Delić* cases are currently being prepared for hearings.

Other appeals

54. The Appeals Chamber rendered three decisions on other appeals in the following cases: *Gotovina et al.*, *Šešelj* and *Karadžić*.

IV. Activity of the Office of the Prosecutor

A. Completion of trial and appeals proceedings

55. The Prosecutor remains strongly committed to completing the remaining trials and appeals in accordance with the Tribunal's completion strategy. Over the reporting period, progress towards the completion of the trial programme has been significant. By the end of the reporting period, 21 accused in seven trials were being prosecuted. The *Popović et al.* trial is expected to conclude with final arguments soon. The *Prlić et al.* and *Gotovina et al.* trials are in the defence stage. Four trials, *Šešelj*, *Đorđević*, *Perišić* and *Stanišić and Simatović* are in varying phases of the Prosecution case. At the end of the reporting period, only three cases (four accused) remain in pretrial stages: *Karadžić*, *Stanišić and Župljanin* and *Tolimir*.

56. In recent months, unpredicted events have caused delays in the trial schedule. A major delay occurred in *Šešelj* near the end of the Prosecution case from an adjournment caused by difficulties in securing the remaining witnesses' evidence. Considerable uncertainty exists about a continuation date of the trial.

57. During the reporting period, appellate work has remained constant. The Prosecution has filed appeals against five of the six accused in the first multiple-accused judgement, *Milutinović et al.* Briefs were filed in the *Haradinaj et al.*, *Dragomir Milošević*, *Boškoski and Tarčulovski* and *Delić* cases. An oral hearing in *Dragomir Milošević* was held on 21 July 2009. Hearings in the other briefed cases are anticipated in September and October 2009. The trial judgement in *Lukić and Lukić* was delivered on 20 July 2009 resulting in a life sentence and a sentence of 30 years; if appeals are filed in this case, this will add to the appellate activities of the Office. The trial judgement in the case of *Popović et al.* is expected to be delivered before the end of the year.

B. Cooperation

1. International cooperation

58. The Office of the Prosecutor continues to seek the full cooperation of the States of the former Yugoslavia and other States to fulfil its mandate, as required under article 29 of the statute of the Tribunal.

59. Cooperation from States of the former Yugoslavia remains vital, particularly in the areas of (a) access to archives, documents and witnesses; (b) the protection of witnesses; and (c) efforts to locate, arrest and transfer the two remaining fugitives and take measures against those who support them.

60. To achieve timely cooperation in these areas, during the reporting period, the Prosecutor met on several occasions with political and judicial authorities in Serbia, Croatia and Bosnia and Herzegovina. In addition, the Office of the Prosecutor continued to maintain dialogue with key officials at both the State and working levels and to develop existing partnerships with national prosecution offices. The Prosecutor also regularly met with ambassadors and other representatives in The Hague.

2. Cooperation of Serbia

61. During the reporting period, developments at the political level and the new leadership at the operational level have led to an improvement of Serbia's cooperation with the Office of the Prosecutor. Serbia has complied with the majority of requests for assistance, including requests to facilitate the appearance of witnesses, access to archives, and the provision of documents. Whereas in the beginning of the reporting period, a number of important requests for access to documents and archives remained outstanding, by July 2009 nearly all requests had been addressed. Serbia's National Council for Cooperation with the Tribunal has successfully led efforts to comply with the Office of the Prosecutor's requests. Continued cooperation from Serbia in providing documents and access to archives sought by the Office of the Prosecutor will be paramount during the remaining senior leadership trials, including the *Karadžić* case.

62. The most critical aspect of Serbia's cooperation remains the apprehension of the fugitives, Ratko Mladić and Goran Hadžić. During the reporting period, the Office of the Prosecutor closely followed the work of the Serbian authorities to locate these fugitives and was regularly briefed on their activities. During the reporting period, Serbia's National Security Council and Action Team in charge of

tracking the fugitives led complex and widespread search operations against the two accused and their support networks. Government services are currently carrying out thorough analysis of information gathered, including information previously available, but not acted upon. Notwithstanding certain deficiencies in some search and seizure operations, the professionalism and efficiency of services involved in tracking fugitives has generally improved. Coordination between the various services in charge of tracking fugitives, which is crucial, is now better compared with a year ago.

63. The Office of the Prosecutor has called upon the political authorities of Serbia to provide all support to the professional work done at the operational level in the hope that these efforts will lead to the arrest of the two remaining fugitives. The Office of the Prosecutor expressed concern with regard to negative and unjustified statements made by Government officials and agencies calling into question the integrity of the Tribunal. These seem to be in contradiction with the level of cooperation provided by the professional services.

3. Cooperation of Croatia

64. During the reporting period, Croatia responded adequately and in a timely manner to the majority of requests for assistance from the Office of the Prosecutor. In addition, the Office of the Prosecutor continued to receive adequate assistance from the Office of the Croatian State Prosecutor.

65. However, during the reporting period, the Office of the Prosecutor has continued to face difficulties in securing Croatia's cooperation in the *Gotovina et al.* trial. Specifically, since 2007, Croatia has continuously failed to hand over key military documents related to Operation Storm. Moreover, progress was limited in the investigation which the Court ordered Croatia to conduct into the missing documents. The Office of the Prosecutor raised with Croatia concerns about the focus, manner, and methodology of the investigation conducted. The matter remains pending before the Chamber. Throughout the reporting period, the Office of the Prosecutor has remained in close contact with the authorities at the Government level and at the level of experts in order to resolve the matter.

4. Cooperation of Bosnia and Herzegovina

66. The authorities of Bosnia and Herzegovina continue to grant access to Government archives and to provide requested documents. The authorities also continue to respond adequately to specific requests for assistance, in particular, by facilitating the attendance of witnesses before the Tribunal.

67. During the reporting period, Bosnia and Herzegovina's judicial and law enforcement system continued to face challenges, which could have an impact on its cooperation with the Tribunal. The Office of the Prosecutor encouraged the authorities of Bosnia and Herzegovina to take necessary measures against those helping the remaining fugitives evade justice or otherwise obstructing the effective implementation of the Tribunal's mandate. The Office of the Prosecutor also continued to ask that measures be taken against those that helped Radovan Stanković escape from prison after he was transferred by the Tribunal to Bosnia and Herzegovina two years ago. The fact that Radovan Stanković has still not been apprehended remains a matter of serious concern.

5. Cooperation from other States and organizations

68. The Office of the Prosecutor continues to rely on States and international organizations for support to arrest the remaining fugitives and in the provision of documents and information required for various trials and appeals.

69. The Office of the Prosecutor appreciates the support provided by States, international and regional organizations (such as the United Nations, the European Union, OSCE, the Council of Europe), and non-governmental organizations, including those active in the former Yugoslavia. This support will remain crucial to the progress of the Tribunal's work.

70. In September 2008 and in June 2009, the Prosecutor briefed the General Affairs and External Relations Council of the European Union on the work of the Office of the Prosecutor and on the cooperation of Bosnia and Herzegovina, Croatia and Serbia.

C. Transfer of cases and investigative files

71. As reported previously, the rule 11 bis transfer procedures have been fully used and no further cases appear suitable for transfer. Of the six cases transferred to Bosnia and Herzegovina, five have concluded with a final appellate decision, and one remains pending at trial. One case transferred to Croatia is awaiting the final appellate decision, while one case transferred to Serbia has been discontinued because of the mental incapacity of the accused. OSCE continues to monitor trial and appeal proceedings in cases transferred to Bosnia and Herzegovina and Croatia on behalf of the Office of the Prosecutor and provides regular reports to the Office. These OSCE reports serve as the basis for the Prosecutor's quarterly progress reports to the Tribunal's judges.

72. The Office of the Prosecutor continues to compile and review investigative material for handover to the State Prosecutor's Office of Bosnia and Herzegovina. During the reporting period, five complete case files (relating to 16 suspects and covering 5 municipalities) were transferred to Bosnia and Herzegovina. The Office anticipates that it will complete the transfer of investigative material related to the last four cases involving 11 suspects to the Office of the Prosecutor of Bosnia and Herzegovina by end 2009. Extensive follow-up assistance will continue to be provided.

73. The Office of the Prosecutor continues to support international and national efforts to strengthen the Special Department for War Crimes of the State Court of Bosnia and Herzegovina. This assistance is crucial to sustaining the investigation and prosecution work regarding investigation files transferred by the Tribunal.

74. The Office of the Prosecutor also regularly responds to requests for assistance from national judicial authorities in the former Yugoslavia and from States outside the former Yugoslavia investigating war crimes committed there.

75. Finally, delegations from prosecutors' offices, mainly from the countries of the former Yugoslavia, continue to visit the Office of the Prosecutor in search of material to support national war crimes investigations.

D. Capacity-building

76. The Office of the Prosecutor continued to fully support the furtherance of the rule of law in the region through capacity-building activities and the development of partnerships with national prosecutors. A concrete example is the joint project between the European Union and the Tribunal enabling liaison prosecutors and interns from the region to work in the Office of the Prosecutor. In June 2009, liaison prosecutors from Bosnia and Herzegovina, Croatia and Serbia assumed duties under this new cooperation programme.

77. Cooperation between the authorities of the region in judicial matters remains crucial for the successful prosecution of war crimes cases at the national level. To promote regional cooperation, the Office of the Prosecutor, with the support of the European Union, also organized a conference of the State and War Crimes Prosecutors of Bosnia and Herzegovina, Croatia, Serbia, Montenegro and the former Yugoslav Republic of Macedonia, in Brussels on 2 and 3 April 2009. Progress in cooperation between prosecution services has been achieved through the development of case inventories using compatible software. While prosecutors have cooperated well, parallel investigations remain a problem where, due to the absence of a legal basis for cooperation, evidence is held by one country, but the suspect resides in another country. The Prosecutor has asked States to urgently address these issues, which could also affect the further prosecution of cases and material transferred by the Office of the Prosecutor.

V. Activity of the Registry

78. During the reporting period, the Registry continued to provide operational support to the Chambers and the Office of the Prosecutor in accordance with the statute of the Tribunal and the Rules, and to manage the Tribunal in all administrative areas. The Registry was headed by Hans Holthuis until 31 December 2008, when his term of office expired. The then Deputy Registrar, John Hocking, served as Acting Registrar until his appointment as Registrar, effective 15 May 2009.

A. Office of the Registrar

79. The Office of the Registrar consists of the Registry Advisory Section for Legal and Policy Matters and the Communications Service.

80. The Registry Advisory Section provided advice to the Registrar, Deputy Registrar, and the Administration of the Tribunal on policy matters, claims against the organization, and contractual and liability issues, offering opinions and interpretations of the statute of the Tribunal, the Rules, the Staff Rules, the Financial Regulations of the United Nations, administrative directives, and other internal legislation. The Section drafted court filings related to issues involving or initiated by the Registry and also prepared briefs for the litigation of staff member claims brought before the Secretary-General and the Joint Appeals Board. It also negotiated and prepared commercial contracts.

81. The Registry Advisory Section frequently liaised with the host country and provided legal and policy advice in the implementation of the Host Country Agreement. The Section assisted in the negotiation of agreements and memorandums of understanding between the Tribunal and States Members of the United Nations on issues such as the Detention Unit, the enforcement of sentences (three agreements were signed during the reporting period), and the relocation of sensitive witnesses (four agreements).

82. The Communications Service — composed of a Media, Outreach, and Web Section and a Library, Publications, Tribunet and Visits Section — launched a new website in December 2008 that will provide audiences with greater information about the Tribunal's history, achievements and ongoing work. The new website includes research tools and databases, such as the Tribunal's Court Records Database. This database provides public and digital access to the Tribunal's court records, comprises nearly 160,000 court filings, and is an important vehicle for the transfer of the Tribunal's knowledge and expertise to the region of the former Yugoslavia and beyond. The Tribunal's Outreach Programme continued to set the standard for international courts, while the Media Office remained active with major media events, such as the transfer of Radovan Karadžić. The Library, Publications, Tribunet and Visits Section increased the effectiveness of the Tribunal's Tribunet and internal communication portal (the organization's key communication tool) to make it more user-friendly for staff.

B. Judicial support services sections

83. During the reporting period, the Court Management and Support Services Section supported up to eight trials, as well as numerous pre-trial, contempt and appeals hearings. The Section was also involved in the establishment of the Court Records Database. The Section worked closely with the Tribunal's Archive Section on a digitization project of the complete audio-visual archives of all court proceedings. As several accused have chosen to represent themselves, a *Pro Se* Office has been created under the joint supervision of the Court Management and Support Services Section and the Office for Legal Aid and Detention Matters. The purpose of the *Pro Se* Office is to coordinate the provision of facilities to self-represented accused for the preparation of their defence. Such facilities include access to the Electronic Disclosure Suite at the Detention Unit, the provision of documents, photocopying facilities, and additional storage space at the Detention Unit.

84. The Conference and Language Services Section continued to provide the required interpretation, translation and court reporting services. During the reporting period, the two Translation Units translated approximately 70,000 pages into English, French, Bosnian/Croatian/Serbian, Albanian and Macedonian. The Conference Interpretation Unit registered 7,000 conference interpreter days. The court reporting services produced 138,000 pages of transcript for up to eight trials.

85. The Victims and Witnesses Section consists of three main units. The Section's Operations and Support Units facilitated 727 witnesses (and accompanying support persons) travelling to The Hague to give evidence. The Protection Unit coordinated professional responses to an increased number of threats to witnesses before, during,

and after their appearance at the Tribunal. Under appropriate circumstances, the Protection Unit also worked to relocate protected witnesses.

86. The Office for Legal Aid and Detention Matters serviced over 500 defence team members in cases in pretrial, trial and appellate proceedings. The largest impact on the workload of the Office resulted from multiple-accused trials, along with an increased use of legal aid funds owing to the complexity and length of these trials. The reporting period also witnessed an unprecedented number of contempt of court proceedings, requiring the Office to appoint and remunerate *amici curiae* investigators and prosecutors, as well as defence counsel to the accused.

87. The Office for Legal Aid and Detention Matters provided counsel to suspects during interviews with the Prosecution and to Tribunal-convicted persons or other persons detained at the Detention Unit who testified in cases before the Tribunal. Applications for early release and commutation of sentence also increased as convicted persons who had served two thirds of their sentences applied through counsel to the President for early release. All cases at the pretrial and trial stages were remunerated by way of a lump sum, while cases on appeal were remunerated on the basis of an hourly allotment. It is envisaged that the hourly payment policy will be replaced by a lump sum legal aid policy as soon as consultations with the Association of Defence Counsel are completed; this policy is expected to be adopted in the later part of 2009. Contempt of court cases were also remunerated at an hourly rate; however, with the increase in such cases, the Office is currently developing a payment policy for contempt cases and it is envisaged that a lump sum payment system will replace the hourly system. The Office continued to administer payment issues pertaining to legal associates to self-represented accused, under the special Remuneration Scheme that was developed during the previous reporting period. In line with specific guidance provided by the Trial and Appeals Chambers, the Office is currently revising this payment policy to reflect the most recent jurisprudence on public funding for the defence of self-represented accused.

88. The Office for Legal Aid and Detention Matters also supported the defence institutionally by expanding the information technology facilities so that defence counsel could continue to fulfil their important role in upholding international justice. The Office continued working in close cooperation with the Association of Defence Counsel to ensure the professional integrity of counsel and engaged the Association of Defence Counsel in consultations on major decisions and policies affecting the work of defence counsel.

89. Finally, the Office for Legal Aid and Detention Matters — within the framework of the Inter-Tribunal Cooperation Project and together with its counterparts at the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the International Criminal Court — shared its experience on a number of defence-related issues, such as the application of the lump sum payment policies, the withdrawal of counsel, and self-representation.

90. During the reporting period, the Detention Unit continued to operate at a high level of activity, serving the judicial process on a daily basis for accused in the trial phase and providing secure custodial care to all detained persons. Additional challenges included an ageing detainee population (average age over 57 years) resulting in increased, complex medical and health-care issues; an unprecedented number of provisional releases of various durations; and facilitation of additional needs of several self-representing accused, detained witnesses, and detainees

charged with contempt of the Tribunal. In October 2008, the Unit reduced its cell capacity by almost 24 per cent, reflecting the initial phase of the downsizing of the Tribunal.

C. Administrative Support Service Division

91. By its resolution 63/255, the General Assembly, having considered the reports of the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions on revised estimates, decided to approve a revised appropriation to the Special Account for the Tribunal in the amount of $376,232,900 gross ($342,332,300 net) for the biennium 2008-2009.

92. The revised staffing levels for the biennium included the reinstatement for the full 12-month period in 2009 of the 258 positions which were originally earmarked for abolition during 2009.

93. During the biennium 2008-2009, extrabudgetary resources are estimated at $3,478,900, to be utilized for a variety of Tribunal activities. As at 15 June 2009, cash donations of approximately $45.7 million had been received for the voluntary fund to support the activities of the Tribunal. For the period from 15 June 2008 to 15 June 2009, the Tribunal received $1,339,291 in voluntary cash contributions.

94. During the reporting period, the Administrative Support Service Division continued to support the implementation by the Human Resources Section of special measures to retain staff (career transition, staff development and training needs). To that end, it coordinated the launch of a comprehensive Career Development Programme. It was also engaged in formulating a procedure to be used for the downsizing of posts in 2010-2011 in consultation with staff representatives.

95. Finally, the Division was responsible for coordinating the preparation of the revised estimates for the biennium 2008-2009 and the proposed programme budget for the biennium 2010-2011.

United Nations A/64/206–S/2009/396

General Assembly
Security Council

Distr.: General
31 July 2009

Original: English

General Assembly
Sixty-fourth session
Item 75 of the provisional agenda*
Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Sixty-fourth year

Report of the International Criminal Tribunal for Rwanda

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly and to the members of the Security Council the fourteenth annual report of the International Criminal Tribunal submitted by the President of the International Criminal Tribunal in accordance with article 32 of its statute (see Security Council resolution 955 (1994), annex), which states:

> "The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly."

* A/64/150.

09-43528 (E) 190809

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Letter of transmittal

31 July 2009

Excellencies,

I have the honour to submit the fourteenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 dated 31 July 2009 to the General Assembly and the Security Council, pursuant to article 32 of the statute of the International Tribunal.

Please accept, Excellencies, the assurances of my highest consideration.

(*Signed*) Charles Michael Dennis **Byron**
President

President of the General Assembly
United Nations
New York

President of the Security Council
United Nations
New York

Fourteenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Summary

The present annual report outlines the activities of the International Criminal Tribunal for Rwanda for the period from 1 July 2008 to 30 June 2009.

The Tribunal faced an unprecedented workload in the reporting period and will continue to do so during the next year. The three organs of the Tribunal work closely together to ensure that the Tribunal meets the expectations of all stakeholders and the targets of its completion strategy, without compromising the requirements of fair trials and high standards of justice.

Six trial judgements concerning nine accused were delivered in the reporting period, bringing to 45 the total number of persons whose judgements were completed at the first instance. The evidence phase in trials against 15 persons has been completed. At the end of the reporting period, judgements were being drafted in seven cases, involving 18 accused.

Following the arrests of three indictees, the denial of requests for the referral of cases to Rwanda, a contempt of court indictment and an order for retrial, the Tribunal was faced with a high number of new cases during the reporting period. Seven trials commenced in the reporting period, two of which had already completed the evidence phase. Five further trials will commence, and be partly completed, in the course of 2009.

In addition to many interlocutory decisions and pretrial orders, the Appeals Chamber rendered two judgements in single-accused cases, bringing to 27 the total number of persons whose judgements had been completed at the appellate level.

Judge Dennis Byron (Saint Kitts and Nevis) and Judge Khalida Rachid Khan (Pakistan) were re-elected for a second term as President and Vice-President in May 2009.

The Office of the Prosecutor accelerated its efforts to ensure the arrest of the remaining 13 fugitives, including enhanced cooperation with Member States. It also assisted Rwandan authorities in their efforts to meet the conditions for the transfer of cases as established by the Trial and Appeals Chambers, which could enable renewed requests for referrals.

The Registry maintained high-level administrative and judicial support to the Tribunal. It ensured the cooperation and assistance of Member States with the Tribunal and conducted a diverse range of outreach and capacity-building activities in Rwanda. The various units and sections of the Judicial and Legal Services Division provided continuous support to trial proceedings. The Division of Administrative Support Services continued its efforts to ensure smooth management of the Tribunal downsizing process.

During the final period of the Tribunal lifespan, the cooperation and support of Member States will be even more indispensable in order to ensure the arrest of the remaining indictees, to relocate acquitted persons and persons who have served their sentence and to provide the Tribunal with sufficient resources to successfully complete its mandate. The Tribunal, for its part, will continue to prove its full commitment to completing its mandate without undue delay.

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I. Introduction

1. The fourteenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Tribunal") outlines the activities of the Tribunal for the period 1 July 2008 to 30 June 2009.

2. The Tribunal, through the Office of the President, the Chambers, the Office of the Prosecutor and the Registry, continued its efforts to meet the goals of its completion strategy, as endorsed by the Security Council in resolution 1503 (2003). All three Trial Chambers were working at full capacity, facing an unprecedented workload in the pre-closure phase.

II. Activities of the Tribunal

Page

5 3. The Tribunal is composed of three Trial Chambers, one Appeals Chamber, the
5 Prosecutor and a Registry. Since 29 May 2007, Judge Dennis Byron (Saint Kitts and
5 Nevis) has served as President and Judge Khalida Rachid Khan (Pakistan) as
6 Vice-President. Both were re-elected for a second term on 8 May 2009.

A. Activity of the President

1. Judicial activity

7 4. During the reporting period, the President made decisions on the transfer of
14 18 convicted persons to Mali and Benin for the enforcement of their sentences. He
15 also issued orders on a variety of other matters, including the conditions of
20 detention of an accused and the designation of trial benches for the variation of witness protection orders.

2. Completion strategy

5. In close cooperation with the Prosecutor and the Registrar, the President continued efforts to implement the completion strategy. On 12 December 2008 and 4 June 2009, the President submitted the six-monthly completion strategy reports to the Security Council. Special emphasis was put on ensuring that the 10 new trials scheduled to commence in 2009 did so expeditiously without comprising the rights of the accused. The downsizing strategy of the Tribunal was further developed in the context of preparing the budget submissions for the biennium 2010-2011.

3. Diplomatic relations and other representation

6. The President maintained regular contact with United Nations Headquarters and the diplomatic community, both in the host country, at the seat of the United Nations and in third countries. The United Nations secretariat, in particular the Office of Legal Affairs, provided invaluable support to the Tribunal, both in terms of legal advice and in ensuring efficient cooperation with the Security Council and the General Assembly. Visits to the Tribunal of the Secretary-General and the

Under-Secretary-General for Legal Affairs further strengthened the close cooperation.

7. In September 2008, the Security Council informal working group on the Tribunals visited the Tribunal for two days, meeting with the Principals and representatives of all sections. The visit allowed the delegates to see the Tribunal's work first-hand and to discuss with stakeholders residual and legacy issues relating to the closing down of the Tribunal in particular.

B. Activities of the coordination mechanisms

1. Coordination Council

8. The Coordination Council, consisting of the President, the Prosecutor and the Registrar, met regularly to discuss issues affecting the entire Tribunal, such as the completion strategy, staffing matters and the preparation of the budget submission for 2010-2011. With the support of the Tribunal Legacy Committee, the Coordination Council also worked on residual and legacy matters, in particular in relation to the preparation of draft reports of the Secretariat to the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the Tribunal archives and the seat of the residual mechanism.

2. Bureau

9. The Bureau, composed of the President, the Vice-President and the presiding judges of the three Trial Chambers, was consulted by the President in regular meetings and through written exchanges on issues relating to the functioning of the Tribunal and on requests for early release or commutation of sentence.

3. Plenary sessions

10. During the reporting period, the Tribunal judges met in three plenary sessions to discuss a variety of issues, including several suggested amendments to the Tribunal Rules of Procedure and Evidence. An amendment to rule 75 was adopted. At its session of 8 May 2009, the plenary also re-elected the President and the Vice-President of the Tribunal for a second term.

4. Rules Committee

11. The Rules Committee submits or discusses proposals for amendments of the Rules of Procedure and Evidence. It is currently composed of Judges Vagn Joensen (Chair), Seon Ki Park and Gberdao Gustave Kam, assisted by Legal Officers from the Chambers. Following a discussion at the plenary session of 8 May 2009, the Committee was extended to comprise representatives of the Office of the Prosecutor and Defence Counsel.

C. Activity of the Chambers

1. Composition of the Chambers

12. The Chambers are composed of 14 permanent judges and 11 ad litem judges. Seven permanent judges sit in the three Trial Chambers and seven permanent judges sit in the Appeals Chamber. Two permanent judges, Judge Jai Ram Reddy (Fiji) and Judge Inés M. Weinberg de Roca (Argentina), as well as one ad litem judge, Judge Robert Fremr (Czech Republic) left the Tribunal at the end of 2008. Three new ad litem judges, Judge Joseph Masanche (United Republic of Tanzania), Judge Mparany Rajohnson (Madagascar) and Judge Aydin Sefa Akay (Turkey) joined the Tribunal in the beginning of 2009.

13. The Trial Chambers are currently composed of Judges Dennis Byron (St. Kitts and Nevis), Khalida Rachid Khan (Pakistan), William H. Sekule (United Republic of Tanzania), Erik Møse (Norway), Arlette Ramaroson (Madagascar), Sergei Alekseevich Egorov (Russian Federation), Joseph Asoka Nihal de Silva (Sri Lanka) as permanent judges and Solomy Balungi Bossa (Uganda), Lee Gacugia Muthoga (Kenya), Florence Rita Arrey (Cameroon), Emile Francis Short (Ghana), Taghrid Hikmet (Jordan), Seon Ki Park (Republic of Korea), Gberdao Gustave Kam (Burkina Faso) and Vagn Joensen (Denmark) and the three new judges mentioned above, as ad litem judges.

14. The Appeals Chamber is composed of Judges Patrick Robinson (Jamaica) as presiding judge, Mehmet Güney (Turkey), Fausto Pocar (Italy), Liu Daqun (China), Andrésia Vaz (Senegal), Theodor Meron (United States of America) and Carmel Agius (Malta). Judges Wolfgang Schomburg (Germany) and Mohamed Shahabuddeen (Guyana) resigned from the Appeals Chamber in November 2008 and May 2009, respectively.

15. Each Trial Chamber may be divided into sections of three judges. Since the adoption of Security Council resolution 1855 (2008), the sections may be composed of ad litem judges exclusively, which also means that they are now competent to preside over a case.

16. Two permanent judges of the Tribunal were assigned to the Appeals Chamber, in accordance with article 13 of the Statute. The Tribunal requested Security Council authorization for the redeployment of up to four additional trial judges of the Tribunal to the Appeals Chamber in order to enable the Appeals Chamber to handle the increased workload in the forthcoming years.

2. Principal activity of the Trial Chambers and the Appeals Chamber

(a) Trial Chamber I

17. During the reporting period, Trial Chamber I rendered one judgement, engaged in judgement writing in two other cases, sat in two ongoing trials and attended to pretrial matters in three cases. It also rendered a decision on a request for referral of a case to Rwanda.

Judgement rendered

Bagosora et al

18. On 18 December 2008, the Chamber (Judges Møse, presiding, Reddy and Egorov) rendered a judgement in the *Bagosora et al.* ("Military I") case involving four senior officers of the Rwandan Army. Colonel Théoneste Bagosora, former Director of Cabinet in the Ministry of Defence, Major Aloys Ntabakuze, former Commander of the Para Commando Battalion, and Colonel Anatole Nsengiyumva, former commander of the Gisenyi operational sector, were convicted of genocide, crimes against humanity and war crimes and sentenced to life imprisonment. The Chamber acquitted General Gratien Kabiligi, the head of the operations bureau (G-3) of the Army General Staff, of all charges and ordered his release. Bagosora, Ntabakuze and Nsengiyumva have appeals pending.

19. The trial spanned 409 trial days, and 242 witnesses testified. Nearly 1,600 exhibits were tendered into evidence and about 300 written decisions were issued. There were approximately 4,500 pages of final submissions from the parties.

Cases in the judgement drafting phase

Renzaho and *Nsengimana*

20. The Chamber (Judges Møse, presiding, Egorov and Arrey) will deliver the judgement in the case of Colonel Tharcisse Renzaho (former prefect of Kigali-Ville) on 14 July 2009. In the course of the trial, the parties called 53 witnesses during 49 trial days. Closing arguments were heard on 14 and 15 February 2008.

21. The trial of Hormisdas Nsengimana (Catholic priest), began on 22 June 2007 before the same Chamber. The parties called 43 witnesses during 42 trial days. Closing arguments were heard on 12 and 13 February 2009. Judgement is expected later this year.

Ongoing trials

Setako and *Munyakazi*

22. The trial of Lieutenant-Colonel Ephrem Setako (former Director of the Judicial Affairs Division of the Ministry of Defence) began on 25 August 2008 before Judges Møse (presiding), Egorov and Arrey. The Prosecution completed its case on 22 April 2009, having presented 21 witnesses. The Defence case began on 4 May 2009 and finished on 26 June 2009, calling 35 witnesses. During the reporting period, the Chamber issued eight written decisions. Closing arguments will take place in October 2009, with judgement expected to be rendered by the end of the year.

23. The Prosecution case against Yussuf Munyakazi, a businessman, commenced on 22 April 2009 before Judges Arrey (presiding), Akay and Rajohnson. Eleven witnesses were heard over seven trial days. The Defence case is scheduled to commence on 31 August 2009. Judgement is expected in 2010. During the reporting period, the Trial Chamber delivered seven written decisions.

Referral decision

Gatete

24. On 17 November 2008, the Chamber (Judges Møse, presiding, Egorov and Arrey) denied the Prosecutor's request to refer the case of Jean-Baptiste Gatete, a businessman, to Rwanda pursuant to rule 11 bis. The decision, which the Prosecution did not appeal, followed the Chamber's previous denial of transfer to Rwanda in the case of Gaspard Kanyarukiga in June 2008. This latter decision, which raised concerns about possible problems in obtaining witnesses and the risk of solitary confinement in Rwanda, was upheld by the Appeals Chamber in October 2008.

Pretrial matters

25. The Chamber (Judge Møse, presiding) held status conferences in three cases. A pretrial conference was held in the case of Callixte Nzabonimana on 15 December 2008, which was transferred to another pretrial Chamber on 9 February 2009. A pretrial conference was held on 20 March 2009 in the case of Yussuf Munyakazi, whose trial began before the Chamber, as noted above. On 26 March 2009, the Chamber also handled a status conference for the trial of Jean-Baptiste Gatete, which will commence in the third quarter of 2009.

(b) Trial Chamber II

26. During the reporting period, Trial Chamber II rendered one judgement, completed the evidence phase in three multi-accused cases involving 14 accused and commenced one trial. Two further cases are in the pretrial stage.

Judgement rendered

Rukundo

27. On 27 February 2009, the Chamber, composed of Judges de Silva (presiding), Hikmet and Park, delivered the judgement in the case of Emmanuel Rukundo, a former military chaplain. He was convicted of genocide and extermination and murder as crimes against humanity based on his participation in the killing of and the causing of serious bodily harm to Tutsi in April and May 1994 in Kabgayi, Gitarama *préfecture*. Rukundo was also found guilty, by a majority of the Chamber, of causing serious mental harm for the sexual assault of a young Tutsi woman. Considering, in particular, Rukundo's stature in society as a priest as an aggravating circumstance, the Chamber sentenced the accused to 25 years imprisonment. Over 67 trial days, the Chamber heard 50 witnesses, including Rukundo. The judgement is under appeal.

Multi-accused cases in the judgement drafting phase

Government II, *Butare* and *Military II*

28. The case of *The Prosecutor v. Casimir Bizimungu et al.* ("*Government II*" case) concerns four former Rwandan ministers of the Interim Government of 9 April 1994: Casimir Bizimungu (Minister of Health); Justin Mugenzi (Minister of Trade and Industry); Prosper Mugiraneza (Minister of the Civil Service); and Jérôme-Clément Bicamumpaka (Minister for Foreign Affairs and Cooperation). Towards the

end of the past reporting period, the Chamber, composed of Judges Khan (presiding), Muthoga and Short, finished the evidentiary phase of the case. During the current reporting period, the Chamber conducted a site visit in Rwanda from 5 to 10 October 2008. The parties filed their closing briefs between 1 October and 21 November 2008, and oral arguments were heard between 1 and 5 December 2008. The Chamber rendered in excess of 30 written decisions on interlocutory motions. Judgement delivery is anticipated for mid-2010.

29. In the *Nyiramasuhuko et al.* trial ("*Butare*" case) before Judges Sekule (presiding), Ramaroson and Bossa, Elie Ndayambaje (former *bourgmestre* of Muganza Commune in Butare *préfecture*), the last of the six accused in the joint trial, completed the presentation of his defence case. The other accused are Pauline Nyiramasuhuko (former Minister of Family and Women's Development); Arsène Shalom Ntahobali (alleged leader of an Interahamwe group in Butare in April 1994); Sylvain Nsabimana (*préfet* of Butare from 19 April to 17 June 1994); Alphonse Nteziryayo (*préfet* of Butare from 17 June to July 1994); and Joseph Kanyabashi (former *bourgmestre* of Ngoma *commune* in Butare). Fourteen defence witnesses were heard, including the accused. The case closed on 2 December 2008. The parties closing briefs were filed on 17 February 2009. Pursuant to defence requests, the Chamber recalled four prosecution witnesses on 23 and 24 February 2009. The parties oral closing arguments were heard from 20 to 30 April 2009. Since 1 July 2008, the Chamber sat for 65 trial days and issued 33 written and 15 oral decisions. The Chamber is currently deliberating on the judgement, which is anticipated for the third quarter of 2010.

30. In the *Ndindiliyimana et al.* trial ("*Military II*" case) before Judges de Silva (presiding), Hikmet and Park, the third of four accused, François Xavier-Nzuwonemeye (former Commander of the Reconnaissance Battalion of the Rwandan Army), who commenced his defence on 23 June 2008, completed his case on 8 October 2008, following the defence cases of Augustin Bizimungu (former Chief of Staff of the Rwandan Army) and Augustin Ndindiliyimana (former Chief of Staff of the *Gendarmerie nationale*). On 20 October 2008, the Chamber commenced hearing the case of the final accused, Innocent Sagahutu (former commander of Squadron A, Reconnaissance Battalion of the Rwandan Army). Over the course of 27 trial days, Sagahutu presented 28 witnesses. On 4 December 2008, the proceedings were adjourned until 16 February 2009, when the Chamber heard the evidence of four recall and additional witnesses as a remedy for the prosecution's violation of its obligation to disclose exculpatory material under rule 68 of the Rules of Procedure and Evidence. On 31 March 2009, the parties filed their final closing briefs, and from 13 to 17 April 2009, the Chamber and the parties conducted a site visit to Rwanda. The Chamber heard the parties closing arguments on 24, 25 and 26 June 2009. During the reporting period, the Chamber sat for a total of 53 trial days. It rendered 22 written and 15 oral decisions. Judgement drafting will continue into 2010.

Ongoing trial

Hategekimana

31. The case of Ildephonse Hategekimana (commander of the Ngoma Military Camp), opened on 26 January 2009, following decisions issued by the Trial and the Appeals Chambers in late 2008, which rejected the requested referral of the case to

Rwanda for trial. At the opening of the trial, the presiding judge recused herself because she had been a member of the bench in another case where there was a finding of fact concerning the accused. The case was reassigned to a new bench composed of Judges Ramaroson (presiding), Hikmet and Masanche and commenced on 16 March 2009. Over 21 trial days, the Chamber heard the evidence of twenty prosecution witnesses and issued 4 written and 16 oral decisions. On 22 June 2009, the defence case commenced. The case will close in mid-September, following a second session for the presentation of additional defence witnesses.

Pretrial matters

32. Augustin Ngirabatware, the former Minister of Planning, made his initial appearance before Judge de Silva on 10 October 2008, following his arrest and transfer from Germany, and pleaded not guilty to all counts in the indictment. A further appearance followed before Judge Sekule on 9 February 2009. In June 2009, the Pretrial Chamber, composed of Judges Sekule (presiding), Bossa and Rajohnson, ordered start of the trial on 3 August 2009, after the Appeals Chamber had remanded the Trial Chamber decision setting the trial date for 18 May 2009. On 16 June 2009, Lead Counsel for the defence was withdrawn. During the reporting period, the Chamber held three pretrial hearings and issued 15 written decisions.

33. Trial Chamber II is currently also preparing the trial against Gaspard Kanyarukiga, a former businessman. In June 2008, Trial Chamber I had denied the Prosecution request to transfer the case to Rwanda. The denial was confirmed by the Appeals Chamber on 30 October 2008. The initially planned start of the trial in June had to be postponed due to resignation of the co-counsel for health reasons. The trial is now scheduled to commence on 31 August 2009 before Judges Hikmet (presiding), Park and Masanche. In the reporting period, the Pretrial Chamber has issued two written and five oral decisions.

(c) Trial Chamber III

34. During the reporting period, Trial Chamber III rendered four judgements, started and closed evidence in one case, continued trial proceedings in one multi-accused case, commenced proceedings in two further cases and prepared trial in one case. One request for referral of a case to a national jurisdiction was denied.

Judgements rendered

Nchamihigo, Bikindi, Zigiranyirazo and *Kalimanzira*

35. On 24 September 2008, the Chamber, composed of Judges Byron (presiding), Kam and Fremr, convicted Siméon Nchamihigo (former Deputy Prosecutor of Cyangugu) of genocide and extermination, murder and other inhumane acts as crimes against humanity based on his participation in the killing of Tutsi in April 1994 at various places in Cyangugu. Considering in particular his prominent public position as an aggravating circumstance, the Chamber sentenced him to life imprisonment. During the trial, the Chamber heard 61 witnesses, including Nchamihigo, over 58 trial days.

36. On 2 December 2008, the Chamber, composed of Judges Weinberg de Roca (presiding), Arrey and Fremr, convicted singer and composer Simon Bikindi of direct and public incitement to commit genocide and sentenced him to 15 years

imprisonment. The Chamber acquitted the accused for conspiracy to commit genocide, genocide, complicity in genocide and crimes against humanity. In the course of the trial, the Chamber heard 57 witnesses over 61 trial days.

37. On 18 December 2008, the Chamber, composed of Judges Weinberg de Roca (presiding), Khan and Muthoga, issued the judgement in the case against Protais Zigiranyirazo, the brother-in-law of late Rwandan President Habyarimana. The Chamber found him guilty of having participated in a joint criminal enterprise with the common purpose of committing genocide and extermination of Tutsi, as well as aiding and abetting genocide. He was sentenced to 20 years imprisonment. In the course of the trial, the Chamber heard 67 witnesses over 88 trial days.

38. On 22 June 2009, the Chamber, composed of Judges Byron (presiding), Kam and Joensen, delivered the judgement in the case against Callixte Kalimanzira, the former chef de cabinet of the Ministry of the Interior. He was found guilty of genocide and direct and public incitement to commit genocide and sentenced to 30 years imprisonment. The trial commenced on 5 May 2008. The Chamber heard 66 witnesses, including Kalimanzira, over 37 trial days. The Chamber rendered 19 interlocutory decisions and orders. Closing briefs were filed on 2 April 2009, and closing arguments were heard on 20 April 2009.

Judgement in the drafting phase

Nshogoza

39. The accused, Léonidas Nshogoza, a former defence investigator in the *Kamuhanda* trial, was charged with contempt of the Tribunal. The trial commenced on 9 February 2009 before Judges Khan (presiding), Muthoga and Akay, and the evidence was concluded on 31 March 2009. The Chamber heard testimony from five prosecution witnesses and 11 defence witnesses, including Nshogoza. Closing briefs in the case were filed on 17 April 2009, and closing arguments were heard on 29 April 2009. The Chamber rendered some 67 written and oral decisions during the course of the reporting period. Judgement delivery is scheduled for 2 July 2009.

Ongoing trials

Karemera et al., *Ntawukulilyayo* and *Muvunyi (retrial)*

40. In the *Karemera et al.* trial, the Chamber, composed of Judges Byron (presiding), Kam and Joensen, continued to hear the defence of the first of the three accused, Edouard Karemera, former Minister of Interior. However, the trial was stayed from August 2008 to March 2009, due to the ill-health of the second accused, Matthieu Ngirumpatse, former President of the Mouvement républican national pour le développement et la démocratie, save for the testimony of four witnesses in November 2008. On 3 March 2009, the Chamber ordered the severance of Ngirumpatse from the case, finding that he would be unfit to stand trial for an indeterminate period of time, but stayed its decision until a ruling by the Appeals Chamber. Ngirumpatse consented to the proceedings continuing in his absence, and Karemera concluded his defence on 28 May 2009. On 19 June 2009, the Appeals Chamber reversed the Chamber's decision on severance and remanded the matter to the Trial Chamber for further consideration; the Trial Chamber then ordered a further stay of the proceedings. During the reporting period, the Trial Chamber delivered more than 150 written and oral decisions, sat for 36 days and heard 29

witnesses. Joseph Nzirorera, former President of the National Assembly, will be the next accused to present his defence.

41. The trial against Dominique Ntawukulilyayo, former *sous-préfet* of Gisagara *sous-préfecture* in Butare *préfecture*, commenced on 6 May 2009 before Judges Khan (presiding), Muthoga and Akay. The prosecution called 12 witnesses over 12 trial days. During the reporting period, the Trial Chamber issued 16 written decisions and orders. The defence case is scheduled to commence on 14 September 2009.

42. Following the Appeals Chamber judgement of 29 August 2008, in which it ordered a retrial of Tharcisse Muvunyi (Lieutenant Colonel, *Ecole des sous-officiers*) for an alleged speech he gave in May 1994 at the Gikore Trade Centre, the prosecution presented its case from 17 to 22 June 2009, with six witnesses before Judges Byron (presiding), Kam and Joensen. The defence is scheduled to commence its case on 24 August 2009. In the reporting period, the Chamber issued 26 decisions and orders.

Pretrial matters

43. Since February 2009, the Chamber (Judges Byron, presiding, Kam and Joensen) has been overseeing the trial-readiness in the case of Callixte Nzabonimana; the trial is expected to start in September 2009. The Chamber has delivered five written and oral decisions during the reporting period.

44. The Chamber, composed of Judges Khan (presiding), Muthoga and Akay, is handling pretrial matters in the case of Michel Bagaragaza, who, at the time of the genocide, was the Director-General of the Rwanda Tea Authority, or the Government office that controlled the Rwandan tea industry. Two status conferences were held during the reporting period, and the trial is expected to commence in September 2009 before another bench of Trial Chamber III.

Referral decision

Kayishema

45. On 16 December 2008, the Chamber denied the Prosecutor's request to refer the case of one fugitive, Fulgence Kayishema, a former inspector of police, to Rwanda under rule 11 bis. The Chamber found that the accused might not have a fair trial and could be subject, if convicted, to imprisonment with isolation. The Prosecutor did not appeal the decision.

(d) Appeals Chamber

46. During the reporting period, the Appeals Chamber was seized of appeals on seven judgements, 10 interlocutory appeals, 23 motions for review or reconsideration and three motions for referral. The Appeals Chamber rendered two judgements, 10 interlocutory appeal decisions, 19 decisions related to review or reconsideration, three decisions concerning referral and 133 pre-appeal orders and decisions.

Appeals judgements

Muvunyi and *Karera*

47. Trial Chamber II convicted Tharcisse Muvunyi for genocide, direct and public incitement to commit genocide, and other inhumane acts as a crime against humanity and sentenced him to 25 years imprisonment. The Appeals Chamber heard the parties on 13 March 2008 in Arusha. In its judgement of 29 August 2008, the Appeals Chamber dismissed the Prosecutor's appeal and granted Muvunyi's appeal in part. The Appeals Chamber reversed Muvunyi's convictions for genocide and other inhumane acts as a crime against humanity; reversed one conviction for direct and public incitement to commit genocide; quashed a second such conviction along with the sentence; and ordered a retrial of an allegation under one count of the indictment.

48. Trial Chamber I convicted François Karera (*préfet* of Kigali *préfecture*) for genocide and extermination and murder as crimes against humanity and sentenced him to life imprisonment. The hearing of the appeal took place on 28 August 2008 in Arusha. On 2 February 2009, the Appeals Chamber upheld the convictions for instigating and committing genocide and extermination, and instigating, committing, ordering, and aiding and abetting murder. The Appeals Chamber affirmed the sentence imposed by the Trial Chamber.

Further appeals from judgement

49. Simon Bikindi, Protais Zigiranyirazo and Siméon Nchamihigo filed notices of appeal against their respective trial judgements, as did the Prosecutor in the *Bikindi* and *Zigiranyirazo* cases. Their appeals are being prepared for a hearing. Aloys Ntabakuze and Anatole Nsengiyumva also filed notices of appeal against their trial judgement; Théoneste Bagosora and Emmanuel Rukundo were granted an extension of time to file their notices of appeal within 30 days of the filing of the French translation of their respective trial judgements. The Prosecution also filed its notice of appeal in the *Rukundo* case.

Referral appeals

Munyakazi, *Kanyarukiga*, and *Hategekimana*

50. On 8 and 30 October 2008 and 4 December 2008, the Appeals Chamber upheld decisions denying referral of the *Munyakazi*, *Kanyarukiga*, and *Hategekimana* cases, respectively, to Rwanda. In all three cases, the Appeals Chamber found no error in the finding that the accused persons' right to obtain the attendance of, and to examine, defence witnesses under the same conditions as witnesses called by the prosecution could not be guaranteed in Rwanda at the time.

D. Activity of the Office of the Prosecutor

51. Pursuant to the arrest of three fugitives in the previous reporting period, the Office of the Prosecutor accelerated efforts to ensure the arrest of the remaining 13 fugitives, many of whom are in the conflict zones of the Great Lakes region. Efforts at seeking further cooperation with Member States were also under way, especially with regard to the four fugitives earmarked for trial in Arusha.

52. During the period under review, the Prosecutor continued to finalize preparation of the cases against the fugitives, with a view to the eventual transfer of 9 of the 13 fugitives to national jurisdictions for trial. The Office of the Prosecutor also assisted Rwandan authorities in their efforts to meet the conditions for referral of cases as established by the Appeals Chamber. The Prosecutor hopes that, in the course of the year, Rwandan efforts will be sufficient for his filing of further applications for transfer of the fugitives to Rwanda for trial.

53. In respect of the four fugitives identified for trial at the Tribunal, the Prosecutor requested an amendment to the Rules of Procedure and Evidence to allow for the taking of special depositions to preserve the testimony of potential witnesses who may, when the fugitives are eventually tried, be unavailable to testify.

54. The Office of the Prosecutor continued to receive and to respond to an increasing number of requests for mutual legal assistance from national jurisdictions conducting investigations, with a view to the prosecution or extradition of Rwandan fugitives appearing on the INTERPOL wanted list.

55. In November 2008, the Prosecutor hosted an international conference of prosecutors from all of the international and ad hoc tribunals and select national prosecuting authorities to discuss greater cooperation in tracking, investigating, arresting, transferring and prosecuting suspects and fugitive indictees charged with genocide, war crimes and crimes against humanity. This has led to further cooperation, and discussions are in place to establish institutional arrangements for deepening such international mutual legal assistance in order to fulfil the objectives of the completion strategy and support the struggle against impunity.

E. Activity of the Registry

1. Office of the Registrar

56. The Immediate Office of the Registrar maintained high-level diplomatic contacts with States and international organizations. Through formal and informal agreements, it secured their cooperation with the Tribunal to support the smooth running of trials. During the reporting period, there was a significant increase in judicial cooperation with Member States. More than 300 notes verbales and correspondence requesting judicial assistance and cooperation from Member States were transmitted.

57. Rwanda continued to cooperate with the Tribunal in facilitating the flow of witnesses from Kigali to Arusha and providing relevant documents to trial proceedings.

58. During the reporting period, two prisoners were released after serving their respective sentences of 7 and 12 years of imprisonment. One detainee was acquitted. Nine prisoners were transferred to Mali and nine others were sent to Benin to serve the remainder of their sentences.

59. One acquitted person was relocated to a Member State, but two acquitted persons remain under Tribunal protection, despite strenuous efforts by the Registrar to find a country of residence for them. This issue, as well as of the relocation of convicted persons who will complete their sentence, is becoming increasingly

crucial as the Tribunal moves towards completion and requires the continuous support and cooperation of States.

60. Protocol Support Services recorded a total number of 2,635 visitors, including high officials and members of the general public, academia, civil society and non-governmental organizations. This represented a significant increase compared to the previous period. Among the dignitaries welcomed to the Tribunal were the United Nations Secretary-General, three Under-Secretary-Generals and representatives of United Nations Agencies and ad-hoc Tribunals, diplomatic missions, as well as African-, European- and United States-based organizations.

61. The Press and Public Affairs Unit continued to improve the internal circulation of Tribunal-related media reports. It worked to strengthen and enhance the wide diffusion of Tribunal activities through press meetings, newsletters and press releases. Its website, films and information brochures, including case profiles, leaflets, cartoons and posters in English, French and Kinyarwanda contributed to the communication policy of the Tribunal. The Unit processed numerous local and international media enquiries and broadcast several trial proceedings via satellite signal for use by media professionals. It launched exhibitions on the work of the Tribunal in the United Republic of Tanzania, Rwanda, Senegal and Uganda and organized special outreach programmes involving exhibitions, film screenings, talks and discussions in Kigali and in all other provinces of Rwanda. A continuous communication link was maintained with universities and other educational institutions in Kenya, Uganda, Burundi, Rwanda and the United Republic of Tanzania, and a drawing and essay competition on the Tribunal for primary and secondary school students in the region was organized. Numerous documentaries on completed cases reached the final stages of completion.

62. Through the Outreach Programme, the Tribunal inaugurated six provincial information centres, strategically located throughout Rwanda. Four additional centres will be inaugurated in the weeks ahead. The centres aim to enhance the knowledge of lawyers at each provincial court. The centres also facilitat, the Tribunal awareness-raising workshops and highlight the achievements and challenges of the Tribunal to the people of Rwanda. With the Department of Public Information in New York, the Tribunal organized exhibitions on lessons learned from the Rwandan genocide, targeting 18,000 Rwandan students, teachers and youth organizations. Awareness-raising workshops were held throughout the country for approximately 15,000 students and teachers. A seminar on international criminal law was organized for 50 members of the Rwandan Bar Association, as well as a two-week online legal research training programme for 100 members of the Association. Under the annual programme of research fellowship awards, six students from the National University of Rwanda spent eight weeks at the Tribunal, conducting research in connection with Tribunal jurisprudence and international law under the supervision of staff members. All training sessions and workshops were generously funded by the European Union.

63. Under the coordination of the Special Adviser to the Registrar on Gender Issues, a module was prepared for sessions to be scheduled in mid-2008 for security sector personnel on gender sensitivity in the management of victims. However, with the impending departure of the Special Adviser to the Registrar, the sessions were not held. Given the recent designation of a Gender Focal Point, the sessions will be tentatively scheduled for the later part of 2009.

64. During the reporting period, the Internship Programme welcomed 205 interns to the Tribunal. About 180 were assigned to the Chambers, the Office of the Prosecutor and the Defence Counsel. The Tribunal also received funding under its Legal Researchers Programme, through which nine candidates from various African countries, including Rwanda and the United Republic of Tanzania, received funding for a three-month legal research assignment at the Tribunal. The growing popularity of the programme among law graduates is attested by the growing number of applications received each year. The Legal Services and Internship Programme Unit also plays an important legal advisory role for matters arising between Tribunal staff members and Tanzanian authorities. During the period under review, the Unit mediated over 20 cases involving staff members and local law enforcement offices. The majority of the cases were resolved without resorting to litigation. Furthermore, the Unit provided legal advice to Tribunal management on a wide range of issues pertaining to the proper implementation and interpretation of United Nations administrative instructions.

2. Judicial and Legal Services Division

65. The Court Management Section continued to provide support services to the Chambers and other stakeholders in the judicial process, including support for site visits in Rwanda, depositions and video-link hearings from various countries. The system for instantaneous production of transcripts continued to be presented throughout Africa, as part of capacity-building initiatives solicited by States. The digitization and redaction of the collection of audio-visual recordings of the proceedings of the Tribunal began and was ongoing. The Court Management Section continued to conduct specialized sessions to strengthen the capacity of the Rwandan court system and maintained assistance in running the legacy and capacity-building committees of the Tribunal.

66. The Defence Counsel and Detention Management Section continued to provide high-quality administrative support to the various defence teams and detainees in Arusha. The Section implemented an improved and streamlined lump sum system for the processing and settlement of defence fees and expenses. The new lump sum system allocates resources to each case according to the stage of procedure and meets the needs of the various defence teams, while realizing increased savings for the Tribunal. The Section also continued to use its innovative web-based system for the electronic filing and processing of defence requests. As a result of these improvements, the Section experienced a significant reduction in the number of complaints from the Defence Counsel. The Section also introduced a new and detailed questionnaire aimed at determining trial readiness, immediate availability and the level of commitment of the Defence Counsel prior to the recruitment of Defence Counsels. Through the use of the questionnaire, the Section was able to maintain stricter control over defence matters, to reduce the number of withdrawals and to ensure that assigned counsel will continue to represent the detainees until the completion of their cases.

67. As stated earlier in the present report, during the reporting period, two prisoners were released and one detainee was acquitted. Eighteen prisoners were transferred to other countries for the enforcement of the remainder of their sentences. As a result, as of 30 June 2009, the United Nations Detention Facility housed a total of 38 persons (30 detainees and 8 convicted persons). Over the same period, the Facility received 20 detained witnesses from Rwanda called to testify in

various trials. The International Committee of the Red Cross visited the Facility on 12 November 2008 and 25 June 2009 and concluded that it conformed to international standards.

68. During the reporting period, the Witness and Victims Support Section ensured the timely availability of a total of 311 witnesses, who were brought from 32 countries in support of the trials of 16 accused persons. Threat assessments were conducted for some witnesses. In accordance with protective measures ordered by the Trial Chambers, transcripts were edited to expunge identifying information of witnesses or their family members, prior to making them public. The Section intensified its post-trial monitoring activities in the countries of residence of witnesses who appeared before the Tribunal. Several witnesses residing in Rwanda enjoyed a wide range of assistance aimed at improving their medical and psychological rehabilitation. The efforts of the Section were successful thanks to the cooperation of several States, which provided temporary travel documents enabling the witnesses to travel to and from Arusha, and to Office of the United Nations High Commissioner for Refugees liaison offices in a number of African countries, which assisted in facilitating the movement and the protection of witnesses. Some States, like Belgium, provided further assistance in escorting witnesses.

69. The Language Services Section continued to provide interpretation, translation and reproduction services to the Chambers, the parties and the Registry. Additionally, in the light of the completion strategy, the roster-building campaign aimed at selecting suitable simultaneous interpreters from various countries scheduled for July and August 2008 was undertaken, and a roster of translators, interpreters and proofreaders was created with a view to pre-empting potential disruption of the trials. Eight proofreaders on the roster had already been recruited on short-term contracts as of February 2009. Documents for translation were outsourced to some translators on the roster.

70. The Legal Library and Reference Section continued to support the judicial process through the acquisition and dissemination of relevant information and documentation resources. The Kigali-based Umusanzu Outreach Library collection was significantly increased to address the needs of Rwandan users. In order to promote the Tribunal and to increase access to its jurisprudence, particularly in areas where the Internet was not available, the Library released the 1995-2008 DVD and the 2007-2008 CD-ROM editions of the *ICTR Basic Documents and Case Law*. In the context of outreach and capacity-building initiatives in Rwanda, the Library conducted a training seminar on online legal research for 100 Rwandan Bar Association lawyers.

3. Division of Administrative Support Services

71. The process of down-sizing posed major challenges to all operations of the Tribunal; all sections of the Division of Administration continued to be proactive and flexible in addressing the challenges.

72. Staff members of the Tribunal come from 80 countries. As of 30 June 2009, the Tribunal had 834 staff members against an authorized complement of 1,032 posts, with 198 vacant posts or a 19 per cent vacancy rate. Based on the current trend of departures, and as staff members continue to look for more stable jobs elsewhere, it is anticipated that the vacancy rate will be above 20 per cent by the end of 2009. The staff gender ratio is 64 per cent male and 36 per cent female.

During the reporting period, the Tribunal undertook a consultative exercise to determine the number and composition of staff to be retained until the completion of the Tribunal's work.

73. With the Tribunal in its down-sizing phase, attracting and retaining competent staff continued to be a major challenge. The short duration of contracts issued to staff members contributed to increased uncertainty and continued to have an impact on the productivity of staff members. The Division of Administration put in place measures aimed at retaining staff and efforts were under way to ensure that contracts were issued in accordance with trial schedules.

74. The Tribunal continued to explore other means of retaining staff until the completion of its mandate. In this regard, the Career Resource Centre organized several career development workshops and training sessions to support staff with their professional aspirations. The Human Resources Planning Section continued to assist staff who were leaving the Tribunal to secure employment elsewhere. The Section continued to compile a compendium of skills available in the Tribunal and planned to hold a job fair, which would bring together the United Nations and several international organizations to review staff résumés, conduct interviews and grant offers of appointment. The Section also provided advice to staff members and judges on their final entitlements and on the implications of the new contractual arrangements and staff rules.

75. The Security and Safety Section continued to work very closely with the relevant authorities of the host country to enhance security measures in line with United Nations requirements and the particular situation of the Tribunal. Within the reporting period, a new security system, "Project access control team", was implemented in accordance with the current global risks analysis conducted by the United Nations Department of Safety and Security.

76. The Information Technology Services Section continued to provide vital support to the Tribunal. The introduction of several online systems tremendously improved various processes. The Audiovisual Unit provided video coverage of all court proceedings and provided video conferencing services for remote witness testimonies and meetings.

77. The Health Services Unit and the Counseling and Welfare Unit continued to address psychosocial, career development, succession planning and other welfare matters of staff members and their families. The two Units continued to provide close monitoring of the health of detainees and staff members. Witnesses were provided with trauma counselling, and professional psychological support was provided to staff and their families. The services of the Units were made available during lunchtime and on weekends in order to better enable staff to make use of their facilities.

78. In the area of resources management, the Budget Unit continued to provide reliable and timely expertise on proper planning, control and monitoring of the utilization of available resources. The Finance Section continued to provide timely and reliable services to staff members and other clients of the Tribunal. The General Services Section and the Procurement Section continued to work closely to develop exit strategies aimed at addressing such issues as repatriation of personnel and their personal effects; safeguarding assets; timely transfer of detainees, witnesses and victims; closure of offices; and final disposal of Tribunal assets.

III. Conclusion and recommendations

79. The Tribunal made significant achievements in the reporting period: six judgements involving nine accused were delivered. The evidence phase in three of the four multi-accused cases and in one single-accused case was completed. Seven trials commenced, two of which had already completed the evidence phase. Five further trials will commence and will be partly completed in the course of 2009.

80. The completion strategy remained a challenge, in particular in the face of the high number of new trials to be conducted before the Tribunal in 2009, the high turnover among staff and the reduced number of judges available to take on additional cases. In this context, the Tribunal continued its efforts to improve the management of the trials in all stages, from pretrial to judgement drafting.

81. The Tribunal appreciates the continuous support of Member States. The support and mutual cooperation remain indispensable, in particular with regard to the challenge of securing the arrest and transfer of the remaining 13 fugitives whose continuous escape from justice must not be accepted by the international community. Cooperation on the relocation of acquitted persons and accused who have served their sentence also remains essential.

82. Completing the trials before the Tribunal expeditiously while maintaining high standards of justice will ensure that the Tribunal legacy will have an impact beyond its judgements in individual cases and will constitute a major contribution to the global fight against impunity.

United Nations A/64/207

General Assembly

Distr.: General
31 July 2009

Original: English

Sixty-fourth session
Item 44 of the provisional agenda*
Report of the Economic and Social Council

United Nations Population Award 2009

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Executive Director of the United Nations Population Fund on the United Nations Population Award, established by the Assembly in its resolution 36/201. The report covers the year 2009 and was prepared in accordance with Economic and Social Council decision 1982/112.

* A/64/150.

09-43598 (E) 210809

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Report of the Executive Director of the United Nations Population Fund on the United Nations Population Award 2009

I. Introduction

1. On 17 December 1981, the General Assembly adopted resolution 36/201 entitled "Establishment of the United Nations Population Award". The Award is presented annually to an individual or individuals, to an institution or institutions, or to any combination thereof, for the most outstanding contribution to increasing awareness of population questions or to finding solutions to them.

2. The Committee for the United Nations Population Award selects the laureate for the Award. The Committee is composed of representatives of 10 States Member of the United Nations elected by the Economic and Social Council for a period of three years.

3. In its decision 41/445, the General Assembly amended article 2, paragraph 1, of the regulations governing the United Nations Population Award so that an individual and an institution could share the award.

4. In its decision 1987/129, the Economic and Social Council amended the rules of procedure of the Committee for the Population Award accordingly.

5. The current elected members of the Committee are Algeria, Bangladesh, the Czech Republic, the Democratic Republic of the Congo, Haiti, Iran (Islamic Republic of), Malaysia, Peru, Sweden and the United Republic of Tanzania.

6. During its first regular meeting, on 28 January 2009, the Committee elected Ambassador Hamidon Ali (Malaysia) as Chairperson for 2009.

II. United Nations Population Award 2009

7. The Committee received 20 nominations from qualified nominators for the 2009 Award. Of these, 9 were for the individual category and 11 for the institutional category. On 23 February 2009, in accordance with the mandate given to it by the General Assembly and after a thorough review of the nominations, the Committee selected Dr. Mahmoud Fahmy Fathalla of Egypt in the individual category and Movimiento Comunal Nicaragüense of Nicaragua in the institutional category.

8. The Committee selected Dr. Mahmoud Fahmy Fathalla in recognition of his exemplary achievements in contributing to increased understanding of population issues and to the design of effective solutions for them, as well as for being a highly effective advocate of action in the fields of family planning, reproductive health, reproductive rights and maternal health. Dr. Fathalla obtained his medical degree in 1957 and a doctorate in obstetrics and gynaecology from Cairo University in 1962; in 1967, he received a Ph.D. from the University of Edinburgh. Dr. Fathalla began his academic career in 1972 as Professor of Obstetrics and Gynaecology at Assiut University, Egypt, where he continues to teach; he was also Dean of the medical school at the same university (1978-1986). From 1989 to 1992, Dr. Fathalla served as Director of the Special Programme of Research, Development and Research Training in Human Reproduction, an inter-agency activity sponsored by the United

Nations Development Programme, the United Nations Population Fund (UNFPA), the World Bank and the World Health Organization (WHO).

9. Dr. Fathalla was the founder of the Egyptian Fertility Care Society (1974), one of the first family planning organizations in the Arab world. Since then, he has been a valuable adviser to the Egyptian Family Planning Association, the Ministry of Health of Egypt and the National Population Council of Egypt. Internationally, many organizations have benefited from Dr. Fathalla's counsel, such as UNFPA, WHO, the International Women's Health Coalition, EngenderHealth, the Programme for Appropriate Technology in Health, the International Planned Parenthood Federation, the David and Lucile Packard Foundation, and the Committee on Population of the National Research Council of the United States of America. Dr. Fathalla is also remembered for the production of a video entitled "Why did Mrs. X die?", which was part of the WHO project, Road to Maternal Death. The video has been widely used in its original versions (English and Arabic) and has been translated into French and Spanish.

10. The combination of a solid biomedical background and the rare ability to communicate and to negotiate made Dr. Fathalla a successful advocate of human reproductive health and rights. His effective contributions to the understanding of population questions and to the design of effective solutions for them have brought him many honours. In addition to awards from his own country, such as the Pioneer Award from the President and the First Achievement Award from the Egyptian Women's Health Association, the Universities of Helsinki, Toronto and Uppsala have awarded Dr. Honoris Causa degrees to Dr. Fathalla. The Royal College of Obstetricians and Gynaecologists of the United Kingdom of Great Britain and Northern Ireland and the American College of Obstetricians and Gynaecologists have also made him an honorary fellow. As a fervent advocate of maternal health, he is one of the founders of the highly acclaimed and successful Safe Motherhood Initiative, which has saved millions of lives around the world. Dr. Fathalla is also recognized as a promoter of the concept of the woman-centred agenda in contraceptive research and development.

11. The Committee for the United Nations Population Award selected Movimiento Comunal Nicaragüense in recognition of its outstanding achievements in training community leaders, community educators and community health volunteers to mobilize local communities and build local networks across Nicaragua that seek to improve the human and material conditions of the poor; promote social and community development and gender equality; and protect natural resources and the environment. It was also selected for its contribution to eradicating poliomyelitis, reducing maternal and infant and child mortality rates; and increasing literacy in Nicaragua. Movimiento Comunal Nicaragüense, formed in 1978, is a non-governmental organization that brings together local communities. Since its inception, one of the priorities of Movimiento Comunal Nicaragüense has been to train population leaders to mobilize the needy, the oppressed and members of poor communities. In 1992, Movimiento Comunal Nicaragüense became an institutionalized organization.

12. Movimiento Comunal Nicaragüense has a wide range of activities that cover 120 municipalities and 2,000 local communities. In more recent years, as a result of major political changes in Nicaragua, Movimiento Comunal Nicaragüense has been able to redefine and reorganize its activities, engaging in many communal activities

with the participation of other official and non-governmental organizations. Movimiento Comunal Nicaragüense has received technical and financial support from international organizations in Luxembourg, Norway and Sweden, as well as from UNFPA.

13. The activities of Movimiento Comunal Nicaragüense have been associated with important changes in the population of Nicaragua, including the eradication of poliomyelitis in the 1980s, the reduction of maternal and infant and child mortality rates, and the increase in literacy rates. More recently, Movimiento Comunal Nicaragüense has been involved in activities that target youth and adolescents with a view to improving gender relations, eliminating domestic violence, preventing the spread of sexually transmitted diseases, including HIV/AIDS, and reducing early pregnancies.

III. Financial matters

14. As at 31 December 2008, the Trust Fund for the United Nations Population Award had a total fund balance of $1,812,386.37. Interest income in 2008 was $58,226.47. Expenditures in 2009, including prizes given to the two laureates, totalled $75,053.13.

United Nations A/64/208

General Assembly

Distr.: General
31 July 2009

Original: English

Sixty-fourth session
Item 65 of the provisional agenda*
New Partnership for Africa's Development: progress in implementation and international support

Africa's development needs: state of implementation of various commitments, challenges and the way forward

Report of the Secretary-General

Summary

The present report is prepared in compliance with the requirements contained in General Assembly resolution 63/1, in which the Assembly requested the Secretary-General to submit a comprehensive report on "Africa's development needs: state of implementation of various commitments, challenges and the way forward" with a view to the formulation, by the time of the sixty-fifth session of the General Assembly, of a mechanism to review the full and timely implementation of all commitments related to Africa's development.

The report assesses the impact on development of three crises currently engulfing Africa: the financial and economic, the food, and the climate change and energy crises. It also examines the major commitments made by African States and institutions, development partners and the United Nations towards the development of the continent, and the state of their implementation. The focus is on commitments in the areas of sustainable economic growth, human development, governance and security, official development assistance, debt relief, trade liberalization and aid for trade. The report reviews the existing monitoring mechanisms and stresses that monitoring is critical if their international goals are to be attained.

It concludes that the crises have occurred at a time when African countries are achieving remarkable economic growth. Hence, in 2008, Africa witnessed a set back in important key areas, such as economic growth, agricultural development and poverty eradication, as well as in many other human development indicators. To reverse this trend, the present report contains some action-oriented recommendations.

* A/64/150.

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I. Introduction

1. The report is prepared in compliance with the requirements contained in paragraph 39 of General Assembly resolution 63/1, entitled "Political declaration on Africa's development needs", in which the General Assembly requested the Secretary-General to "submit to the General Assembly at its sixty-fourth session a comprehensive report, with recommendations, on 'Africa's development needs: state of implementation of various commitments, challenges and the way forward' with a view to the formulation, by the sixty-fifth session of the General Assembly, of a mechanism to review the full and timely implementation of all commitments related to Africa's development". The report builds on a similar report of the Secretary-General dated 15 July 2008[1] and, hence, it stresses only the commitments, and the state of implementation, made or achieved during the past 12 months. It has benefited from the inputs of the Inter-Agency Task Force on Africa. It has also benefited from information and data provided by Member States, the African Development Bank (AfDB), the secretariat of the New Partnership for Africa's Development (NEPAD), the African Peer Review Mechanism secretariat, and the Organization for Economic Cooperation and Development (OECD). The report is complemented by the report of the Secretary-General entitled "New Partnership for Africa's Development: seventh consolidated progress report on implementation and international support".[2]

2. The resolution was adopted at the high-level meeting on Africa's development needs, held at Headquarters on 22 September 2008. The meeting acknowledged that tremendous gains are possible if the global community translates its commitments into concrete results. On 25 September 2008, the high-level event on the Millennium Development Goals ended with a number of new commitments and generated an estimated $17 billion.

3. These meetings provided an opportunity for the international community to reiterate its commitments to the development of the continent. They also paved the way to the 2008 Doha Review Conference on financing for development, and set the stage for other high-level events held in 2008 and 2009, such as the Conference on the World Financial and Economic Crisis and Its Impact on Development (June 2009), the World Conference on Higher Education, held by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (July 2009), and the African Union summit on increasing investment in agriculture for economic growth and food security (July 2009). Together with the forthcoming United Nations Climate Change Conference, to be held in December 2009, they are timely events to agree on new strategies conducive to Africa's development.

4. For several years now, the economic and political context in Africa has been developing favourably, with good economic performance and a significant drop in the number of countries suffering from armed conflict. However, the current international context has put a dent in this remarkable trend. In the wake of financial and economic crises and the perpetuation of the food, climate change and energy crises, Africa's hard-won achievements in poverty eradication have been jeopardized. More than having an effect on economic indicators, these crises have a social and humanitarian impact on the everyday life of approximately 950 million

[1] A/63/130.

[2] A/64/204.

Africans. Just six years from the deadline set by the international community for achieving the Millennium Development Goals, several reports indicate that most of the sub-Saharan African countries are not on track to attain all of the goals by 2015. In this context, African Governments, the United Nations and development partners have to take bold steps to meet their commitments.

II. Africa's development needs and challenges

5. The three major crises that currently affect the continent — the economic and financial, the food, and the climate change and energy crises — are interconnected and feed into one another. These crises are the central contextual factor that will condition the effort to reach the Millennium Development Goals.

A. Effects of the economic and financial crises in Africa

6. Africa was not at the centre of the financial and economic crises, but the contagion effects have reached the continent. Although the region was shielded from some of the collapse seen in the developed world, the impact of the crises is nonetheless profound. It may reverse the hard-earned socio-economic and political gains that Africa achieved in the recent past. The decrease in demand for African exports and the sharp swings in commodity prices are affecting current account and fiscal balances. Also, a number of African countries, mainly those highly dependent on exports of fuels and metals, are experiencing a weakening of their terms of trade. The OECD, AfDB and the Economic Commission for Africa (ECA) project growth in Africa to drop to 2.8 per cent in 2009, from 5.7 per cent in 2008 and 6.1 per cent in 2007.

7. The tightening of global credit conditions may lead to a shortfall in private capital flows. Prior to the financial crisis, net private inflows to sub-Saharan Africa had been rising strongly since 2002, reaching $55.5 billion in 2007, but in 2008 those figures were expected to decrease to $35.9 billion. Another consequence of the crisis is the decrease in the remittances caused by the rise in unemployment in the developed world. Although remittances to sub-Saharan Africa reached $18.6 billion in 2007 and were expected to reach $19.8 billion in 2008, in 2009 the volume is likely to drop.

8. The financial crisis could lead to a decline in official development assistance (ODA) flows in 2009. Since some donors set their aid targets as a percentage of gross domestic product (GDP), a drop in GDP could lead to a drop in aid. There is also an increasing risk of resurgent debt burden. States with large debt burdens, denominated in foreign currencies, may default on their debts owing to a depreciation of their currencies. The crises will likely result in further cuts in education, health and social services budgets. Women, for example, will likely face greater income insecurity and increased burdens of family care. According to the International Labour Organization (ILO), approximately an additional 3 million people could be left unemployed in sub-Saharan Africa, raising the total number of unemployed people to 28 million. A prolonged recession and insufficient attention to social needs could cause social unrest, rising criminality and weakening governance. Finally, the crises have immediate effects on trade finance and small firms, and new entrants may face difficulties in obtaining trade finance.

9. African leaders have shown determination in addressing the detrimental impact of the crises. Many Governments have set up monitoring units to identify the evolvement of the crisis and to formulate targeted responses. In addition, Governments have introduced a range of policy measures, including fiscal stimulus packages, targeted assistance to sectors and expansionary monetary policies. AfDB is also providing support through the establishment of an Emergency Liquidity Facility with a provisional $1.5 billion loan and the setting up of a $1 billion Trade Finance Initiative. However, as the Committee of African Finance Ministers and Central Bank Governors alerted, the limited resources of African States are inadequate in relation to the scale of the impact.[3]

10. The international community has also taken measures to address the negative effects of the crises on the continent. In April 2009, at the London Summit, the G-20 committed to providing $50 billion to support social protection, boost trade and safeguard development in low income countries; to supporting a substantial increase in lending by multilateral banks; and to the doubling of the International Monetary Fund (IMF) concessional lending capacity for low income countries. Also, the World Bank called on Governments of developed countries to donate 0.7 per cent of their stimulus packages to a vulnerability fund as aid to poorer countries. Assuming that stimulus packages could amount to between $2 trillion and $3 trillion through 2010, this would add $14 billion to $21 billion in flows for developing countries. The United Nations has also taken steps to address the crises. The report of the Secretary-General on the world financial and economic crisis, issued as a document of the 2009 Conference on the World Financial and Economic Crisis and Its Impact on Development, highlighted that "inadequate international coordination could not only endanger economic recovery and achievement of the Millennium Development Goals, but may also have wider security repercussions".[4] The outcome document of the Conference argued that "an adequate share of any additional resources — both short-term liquidity and long-term development financing — will need to be made available to developing countries, especially the least developed countries".[5] Moreover, the Commission of Experts of the President of the General Assembly on reforms of the international monetary and financial system called upon high income countries to abolish domestic support for cotton subsidies, as they distort prices to the detriment of African countries.

B. Impact of the food crisis in Africa

11. Ensuring food security in Africa, given the impact of climate change and the financial crisis, may be one of the biggest challenges of this century. The rise in food prices in the period 2006-2008 resulted in a 50 to 200 per cent increase in selected commodity prices and drove between 109 million and 126 million people worldwide into poverty. With Africa's population set to rise substantially, the continent risks being plunged into a deepening food crisis in the absence of urgent changes to the management of its natural resources. Food security has hence to be approached in a more comprehensive perspective where climate change, use of land

[3] See "Impact of the Crisis on Africa's Economies: Sustaining Growth and Poverty Reduction", report of the Committee of African Finance Ministers and Central Bank Governance (17 March 2009).

[4] A/CONF.214/4, para. 39.

[5] A/CONF.214/3, para. 10.

and resources for production for some types of biofuel, the agricultural subsidies operating in rich countries, agricultural investment and efficiency play a very significant role.

12. The African Union has taken steps to address the soaring of food prices last year. The food crisis was one of the major items on the agenda of the African Union summit held in Egypt in July 2008. In accordance with the objectives of the Comprehensive Africa Agricultural Development Programme of the African Union/NEPAD, African leaders have identified a series of short- to long-term measures for boosting food security. For instance, more investments are required in production factors such as land, water resources and essential inputs such as improved seeds and fertilizers. The thirteenth session of the African Union summit, held in July 2009, focused on the theme "Investing in agriculture for economic growth and food security". In addition, AfDB approved more than $700 million in the period 2008-2009 to address the same problem. For long-term measures AfDB plans to increase water storage capacity, to develop irrigation and to reduce post-harvest losses. The African Union/NEPAD-led task force on rising food prices coordinates the alignment in financing towards the responses to the high food prices.

13. The international community has also shown its commitment. The High-level Conference on World Food Security held in Rome, in June 2008, adopted a declaration calling on the international community to increase assistance for developing countries, in particular the least developed countries and those that are most negatively affected by high food prices. The Conference adopted short, medium and long-term measures to mitigate the effects of the crisis. Even though donors committed $22 billion to address the food crisis, only limited funds have been disbursed. The follow-up High-Level Meeting on Food Security for All, held in Madrid in January 2009, assessed progress since the Rome summit and agreed to priorities and commitments for moving ahead. It included a broad agreement on the need to address global hunger in all its facets. It also reiterated the need to establish a global partnership for agriculture, food security and nutrition to be realized in 2009.

14. In July 2008, the United Nations system set up the High-Level Task Force on Food Security, as a coordination mechanism chaired by the Secretary-General, and established the Comprehensive Framework for Action, representing the consensus view of agencies and organizations. Additional mechanisms to confront the food crisis include the Global Food Crisis Response Programme, a $1.2 billion rapid financing facility created in 2008 by the World Bank; support for early responses to the high food prices by the International Fund for Agricultural Development 8th Replenishment; and the European Commission 1 billion euro Food Facility. Also, the Food and Agriculture Organization of the United Nations Initiative on Soaring Food Prices, launched in December 2007, continues to expand. It works primarily with small farmers to ensure the success of the next planting seasons in the short term and to increase food production through improved seeds and fertilizers in the long term. The G-8 meeting in L'Aquila, Italy, pledged $20 billion in agricultural aid. These funds are to be allotted to building an agricultural economy in countries in need, specifically in Africa.

C. Climate change and energy crisis

15. Although Africa has the lowest per capita emission of greenhouse gases in the world, the expected impact of climate change in the region is indeed dramatic. In most countries, farming depends entirely on the quality of the rainy season and therefore increased droughts will seriously impact the availability of food. Prolonged seasons of drought also cause the migration of people to other areas and are a potential source of conflict between communities competing for scarce resources. Furthermore, several coastal zones would be adversely affected by sea-level rise associated with climate change. As the Intergovernmental Panel on Climate Change has highlighted, Africa is expected to be at risk primarily from increased incidences of vector-borne diseases and reduced nutritional status.

16. The African Union has expressed on several occasions its concern on the vulnerability of Africa's socio-economic and productive systems to climate change. In 2003 the action plan of the NEPAD Environment Initiative provided an environmental policy framework for addressing environmental issues. In addition, the decision on climate change and development in Africa, adopted by the Assembly of the African Union at its eighth ordinary session[6] in 2007, included a wide range of commitments, namely to integrate climate change and adaptation strategies into national and subregional development policies, programmes and activities. To date, 29 African countries have completed their national adaptation programmes of action, which provide a process for countries to identify priority activities that respond to their urgent and immediate needs with regard to adaptation to climate change. Furthermore, in 2009, Governments have also adopted the African common position on climate change in the negotiation process for the upcoming global climate change negotiations to be held in Copenhagen in December 2009. To address some of its commitments, NEPAD has attempted to prioritize climate change in its 2009 work programme. Nonetheless, African Governments still need to meet the commitment to undertake awareness-raising among policy and decision makers and civil society, and to avail funds to promote and strengthen the application of science and technology to climate data collection and analysis.

17. The international community has also taken some measures to address the effects of climate change in the region. The G-8 summit in 2003 agreed to develop fully operational regional climate centres in Africa, and at Gleneagles, Scotland, in 2005, the G-8 countries' action plan shifted to a broader approach, encompassing energy efficiency, clean technology and support for adaptation. At the United Nations Climate Change Conference, held in Bali in 2007, participants decided to launch an Adaptation Fund to support projects in developing countries that will help people cope with the impacts of climate change. The Fund is not operational, and is currently estimated to be worth around $200 million to $300 million. In 2008, the African Union and the European Union (EU) also outlined their common concerns for global warming and their common interest for an ambitious post-Kyoto international agreement through the endorsement of a joint declaration on climate change. In 2009, the EU financed a satellite receiving station, located at African Union headquarters, to track the effects of climate change on the continent. Moreover, through the Global Climate Change Alliance, the EU earmarked €50 million, over the period 2008-2010, to address climate change in some African countries.

[6] Assembly/AU/Dec. 134 (VIII).

18. Climate change may also deepen the ongoing energy crisis in Africa, manifested either in the absence or in the deficient supply of energy. Approximately 550 million Africans have no access to electricity, and in many parts of the continent there are systematic power shortages, with detrimental impacts on businesses. Energy problems emerge because existing power infrastructure is in disrepair and no major new infrastructure has been developed in many years. Also, the region was unable to diversify away from the conventional energy sources to the abundant renewable and other non-conventional sources. Less than 7 per cent of Africa's hydropower potential is currently utilized. Finally, climate change has contributed to more erratic rainfall, and has severely affected the generation capacity of hydroelectric power dams in both eastern and western Africa, forcing countries to spend their limited resources on adding emergency generation capacity. Africa, with 13 per cent of the world's population, consumes only 3 per cent of the world's commercial energy.

19. According to latest available data, external support for the energy sector has significantly expanded. ODA commitments rose sharply, from $1.9 billion in 2005 to $2.4 billion in 2006. AfDB, and the World Bank, through the Clean Energy for Development Investment Framework, are promoting a multi-track approach to address the energy challenges of developing countries covering: improving access in urban and rural areas; upgrading national transmission grids; helping to develop efficient power-trade arrangements; promoting off-grid renewable power supply systems; and encouraging sustainable household fuels. The Framework is the response to the G-8 request, made in Gleneagles, for an investment framework on climate change, clean energy and sustainable development. African countries have also begun to address these issues by developing regional energy interconnections and facilitating regional energy trade through the establishment of regional power pools in all subregions.

D. Other African development challenges

20. In addition to the financial, food and climate change crises, Africa's tremendous potential has not been fully harnessed, owing to a set of endogenous and exogenous factors analysed in the 2008 report of the Secretary-General on Africa's development needs (A/63/130). Despite the improvement in social and economic indicators, most of those challenges remain: there has been an increase in the number of armed conflicts, the brain drain is still salient, and governance in some States is still marked by personalized rule and corruption. In the current context of the financial, food and climate change crises some of these vulnerabilities have been amplified.

21. In addition, Africa is more heavily affected by HIV/AIDS than any other region of the world. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), an estimated 22 million people were living with HIV at the end of 2007 and approximately 1.9 million additional people were infected with HIV during that year. In sub-Saharan Africa it is estimated that 11.6 million children under the age of 18 have been orphaned as a result of AIDS. Apart from the dramatic human and health consequences, the economic impact of HIV/AIDS includes slower economic growth and rising poverty, a distortion in the allocation of resources away from the productive sectors, and an increasing dependent ratio of the population.

22. Furthermore, Africa is experiencing the largest urban growth in the world. While some of this growth is due to migration from rural areas, most of it results from natural increases in the urban population. According to the United Nations Human Settlements Programme *State of the African Cities Report 2008*, in 2010 approximately 40 per cent of Africans will live in urban areas, and in 2030 that figure may swell to one-half of the continent's population. The United Nations Human Settlements Programme (UN-Habitat) estimates that 62 per cent of the urban population in sub-Saharan Africa currently live under slum conditions. While Africa has the largest population growth in the world, its urban areas are not prepared to accommodate the demographic demand. Despite the region's clear urbanization trend, national Governments and development groups continue to direct their energies towards rural economic development. In an attempt to invert this trend, UN-Habitat, the European Commission and the Secretariat of the African, Caribbean and Pacific Group of States (ACP) signed in June 2009 a declaration that urged the prioritization of urban issues in the overall development agenda in ACP countries.

III. Commitments and state of implementation

A. African States and institutions

23. Over the past decades, many of the new development initiatives introduced in Africa failed to produce their much-anticipated results. The turn of the millennium, however, heralded a new phase in Africa's development, characterized by bolder commitments and more rigorous monitoring. In this new context, African States have increased their level of commitment to the rule of law, democracy and human rights. This new phase has also been depicted by the recognition that Africa's development is contingent not only on the dedication of the international community, but also, and primarily, on the willingness of African States and institutions to take full responsibility over the helm. Although the negative effects left by the region's colonial patrimony cannot be neglected, they should not be used to conceal any present wrongdoings. Africa's development is Africa's responsibility. In the Constitutive Act of the African Union, adopted in 2000, African leaders expressed their determination "to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world".

Sustainable economic growth

24. The resumption of growth in many African economies since the mid-1990s has been noteworthy. Africa's economy is estimated to have expanded 5.7 per cent in 2008, the first time in 45 years that growth exceeded 5 per cent for five years in succession. While high commodity prices have contributed to Africa's growth, political and economic reforms have resulted in better economic management and an improved business environment. However, as a result of the financial and economic crises, the growth pace has slowed and is projected to reach only 2.8 per cent in 2009, much lower than the 7 per cent average rate estimated for achieving the Millennium Development Goals. In 2008 the path towards poverty reduction was hence obstructed. Although international food prices have declined since the middle of 2008, the benefits of the lower prices will not be felt immediately because local prices lag behind changes in international prices. The

World Bank has reported in *Global Monitoring Report 2009* that, in 2009, 386 million people in sub-Saharan Africa are living below the international poverty line of $1.25 per day, a slight increase from 382.7 million in 2008, and per capita income adjusted for terms of trade will decline in 2009 in a number of African countries. As a group, sub-Saharan Africa countries are particularly affected: 13 countries will experience decline in per capita income in 2009 on the order of 11 per cent on average. The World Bank has estimated that sub-Saharan Africa will be off target to meet the Millennium Development Goals of halving poverty by half by 2015.

25. Africa has shown some progress in trade liberalization and economic diversification, namely in the reduction of import tariffs and export taxes, and quantitative restrictions. This has led exports to increase from $159 billion in 2000 to $424 billion in 2007. Yet, progress towards deepening regional economic integration has been slow and hampered by obstacles to cross-border trade, and the overlapping membership of the regional economic communities. The share of intraregional trade in total African trade stood at only 9.5 per cent in 2007.

26. Another engine for growth in the continent is agriculture, which accounts for more than 40 per cent of total export earnings. African countries are in the process of integrating the African Union/NEPAD Comprehensive Africa Agricultural Development Programme Agenda into their agriculture and rural development strategies and programmes. However, as of June 2009, only eight countries had achieved the target to allocate 10 per cent of national budgets to agriculture development by 2008, as set out in the 2003 Maputo Declaration of the Assembly of the African Union, and only nine countries exceeded the 6 per cent agriculture sector growth target. This slow progress is mostly owed to inadequate agricultural sector policy strategies and to lack of African Union sanctions for countries that fail to comply. However, agreement has been reached with partners on issues of financing and the implementation of the Comprehensive Africa Agricultural Development Programme. The Comprehensive Africa Agricultural Development Programme Multi-Donor Trust Fund, launched in 2008, with an initial commitment of $50 million, has become operational.

27. On infrastructure, the African Union provided a priority programme entitled "Linking Africa" in its strategic plan for 2004-2007 and the NEPAD Infrastructure Short-Term Action Plan has been adopted. In addition, NEPAD, the African Union and AfDB are currently finalizing a programme for infrastructure development in Africa. Governments are also looking to public-private partnerships to improve infrastructure networks in their countries and enhance service delivery to their people. Even though reasonable resources have been committed, Africa still lacks the basic infrastructure to facilitate sustainable development and trade regionally and globally, and to ensure competitiveness among its subregions. In terms of paved road density, sub-Saharan Africa has a low coverage of 31 km per 1,000 km. In 2009, the African Union adopted the Declaration on development of transport and energy infrastructure in Africa, which acknowledged the enormity of gaps in transport and energy infrastructure in Africa and the huge financial needs of these infrastructure. The Declaration also included several commitments in the areas of regulation harmonization, public financing and improvements in connectivity.

28. As economic growth also depends on science innovations and technology transfers, in 2006 the African Union endorsed the Science and Technology Consolidated Plan of Action to enable Africa to harness and apply science, technology and related innovations to eradicate poverty and achieve sustainable development. The African Science, Technology and Innovation Indicators Initiative, which was established to measure progress made by African Union member States in the areas of research and development, has reported a total of 19 countries that participated in the first round of national surveys on determining the status of science and technology. They reported their preliminary findings at a workshop held in March 2009 in South Africa. Technology development and transfer are also key to adapting to and mitigating climate change. The Bali Action Plan calls for enhanced action on the removal of obstacles to, and the provision of incentives for, the acceleration and scaling up of technology transfer, along with cooperation on research and development.

29. Private investments are also one of the main engines of growth, as emphasized by the NEPAD founding document. In 2008, Governments made progress in simplifying economic regulations and strengthening the institutional environment for doing business: 28 economies implemented 58 reforms, as compared to 24 economies and 49 reforms in 2006 and 2007. The pace of reforms is gathering momentum, with a 70 per cent increase in the number of countries reforming between 2005 and 2008. Consequently, in 2008, sub-Saharan Africa's regional ranking on the pace of reform improved to third place, up from fifth place in 2007.[7] NEPAD has also scaled up its work on promoting an investment-friendly continent with the NEPAD-OECD Africa Investment Initiative, whose objective is to advance private sector development in the continent. However, the cost of doing business in sub-Saharan Africa is still the highest in the world.[8] In this regard, civil society organizations play a key role in highlighting the strategic importance of having an investment-friendly environment as a way to boost economic growth. In May 2009 the African Union Commission, ECA and the NEPAD secretariat discussed how the private sector and civil society organizations could promote the overarching objectives of the African Union and NEPAD.

Human development

30. On education, the African Union declared 2006-2015 as the Second Decade of Education for Africa, a programme that tailors international commitments, such as the Dakar Framework for Action (Education for All), to the specific needs of the African continent. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), Africa has made particularly impressive strides, with many Governments increasing the priority attached to basic education. Net primary enrolment in sub-Saharan Africa has grown from 60 per cent in 2000 to 71 per cent in 2007. However, according to UNESCO projections, the target of achieving universal primary enrolment will be missed.

31. One of the most important African commitments on health is the pledge by States, enshrined in the 2001 African Union Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infections Diseases, to spend 15 per cent of their

[7] OECD Development Centre, AfDB and Economic Commission for Africa, *2009 African Economic Outlook*.

[8] World Bank, *Doing Business 2009*.

budgets on health. In 2007 only 6 countries had met the commitment of allocating 15 per cent of the national budget to health. African States have also made important commitments on maternal health and child mortality, as enshrined, for example, in the African Charter on the Rights and Welfare of the Child, the Declaration and Plan of Action of Africa Fit for Children, and the Africa Health Strategy. Despite some progress, the deaths of under-five children remain unacceptably high in Africa, reaching, in 2007, 145 per 1,000 children in sub-Saharan Africa and 35 per 1,000 in northern Africa.[9]

32. Finally, in the past few years, African States have adopted important decisions on gender, including article 4 (1) of the Constitutive Act of the African Union, which has enshrined the gender parity principle; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; and the Solemn Declaration on Gender Equality in Africa. More recently, in 2009, African leaders made notable progress with the adoption of the African Union Gender Policy and its 10-year implementation plan. It includes seven well-defined and ambitious commitments, including the target to mobilize different players for gender equality in Africa, to adopt legislation and legal protection actions against discrimination for ensuring gender equality, and the commitment that the member States will institutionalize a pan-African approach to gender equality and mainstreaming. Recent data continues to indicate that access to resources is not equitable between men and women across the continent. This year is a critical time for stocktaking in Africa, as in 2010 the midterm review of the Beijing Platform for Action (Beijing plus 15) will take place.

Governance and security

33. African Governments have made a series of commitments on good governance and security and have put in place a range of practical mechanisms, including the African Peer Review Mechanism, the African Court of Human and Peoples' Rights and the African Court of Justice. According to the African Governance Report, the scope for political representation and competitive electoral politics, human rights and the observance of rule of law have improved. In addition, civil society organizations contributed to higher political awareness among the population and obliged Governments to become more accountable. As of June 2009, 30 countries had voluntarily acceded to the Mechanism, 15 countries had launched the review process and 12 peer reviews had been completed. The Mechanism has paid attention to critical issues such as managing diversity and xenophobia, elections, resource management, land and corruption. Implementation of Mechanism recommendations remains a challenge. To overcome this obstacle, the Mechanism secretariat has designed a programme of support for the implementation of the national programmes of action of countries already peer-reviewed. Indeed, despite some improvements, the administrative capacity of Governments remains weak. As an example, although 27 countries have ratified the African Union Convention on Preventing and Combating Corruption, many have yet to develop comprehensive national strategies for its effective implementation.

[9] *The Millennium Development Goals Report 2009*, p. 24 (United Nations publication Sales No. E.09.I.12).

34. The report of the Secretary-General on conflict prevention[10] underlines that the cost of armed conflict in Africa is equivalent to or exceeds the amount of money the continent receives in international aid. To address the continent's security concerns, the African Union adopted in 2002 the Protocol Relating to the Establishment of the Peace and Security Council giving birth to the so-called African Peace and Security Architecture. The African Union and the regional economic communities have also intervened with peacekeeping missions in several conflicts. However, sufficient and predictable funding remains a major constraint on peacekeeping by the African organizations. The establishment of the African Standby Force, a rapid reaction force to comprise 8,000 soldiers and 2,000 civilians by 2010 is a notable achievement. Although some progress has been made in doctrine, standard operating procedures, command, control, and communications and information policy, the establishment of the African Standby Force is lagging behind schedule. In the African context, attention needs to be devoted to the special needs of post-conflict countries. The African Union adopted, in 2007, a post-conflict reconstruction development policy in Africa, but there needs to be more fact-finding missions to identify the specific needs of these countries and better assistance provided.

B. Development partners

35. For a long time, and on many occasions, development partners have expressed their strong support for Africa's development. At the 2005 World Summit, countries reaffirmed their commitment to address the special needs of Africa. Recently, non-traditional development partners have equally taken steps to support the development of the continent. China, India, Turkey and the Republic of Korea have recently held high-level summits with African countries to enhance cooperation on all fronts. This shows the increasing level of commitment of international partners to the development of Africa.

Official development assistance and debt relief

36. At the 2005 G-8 summit, development partners committed to raising overall ODA by $50 billion in 2010 over 2004 figures, with $25 billion going to Africa. This presupposes raising aid flows to the region from $29.5 billion in 2004 to $55 billion in 2010 (at 2004 prices and exchange rates) or to $66 billion (at 2008 prices). The EU also committed to increase ODA levels to 0.56 per cent of gross national income by 2010, with half of this increase going to sub-Saharan Africa. Development partners have also made commitments on aid effectiveness, financing for development and harmonization. On effectiveness, the 2005 Paris Declaration and the 2008 Accra Agenda for Action include measures to improve the quality and impact of aid. Development partners have also committed to the development of innovative financing mechanisms. Finally, the 2003 Rome Declaration on Harmonization commits participating institutions to simplifying and harmonizing their requirements, as well as reducing associated costs. In April 2009, the G-20 summit underscored the importance of meeting the aid commitments, and, in May 2009, members of the OECD Development Assistance Committee adopted an action

[10] S/2008/18.

plan, which also renews efforts to bring the collective aid performance back on track, especially for Africa.

37. The state of implementation of these commitments varies widely. On volume, ODA levels rose from $29.5 billion in 2004 to $38.7 billion in 2007 and $42 billion in 2008. In practice, according to OECD estimates, Africa has received only about 31 per cent ($12.5 billion) of the total ODA increase since 2004, a large percentage below the 50 per cent pledged at Gleneagles. To achieve the target, donors need to boost their aid to Africa between 2007 and 2010 by over 17 per cent annually. On aid quality, the 2008 OECD Survey of Monitoring the Paris Declaration shows that, although progress has been made in several areas, it is unlikely that most of the key targets will be met by 2010. On a more positive note, domestic revenue in Africa as a whole increased from $138 billion (the average figure over 1997-2002) to $367 billion in 2007, and net private inflows to sub-Saharan Africa rose from $6.9 billion in 2002 to $55.5 billion in 2007. Harmonization is progressing, thanks to the multiple efforts conducted by donor countries through the adoption of joint programming and assistance strategies, the pooling of funds and the use of country systems when feasible. More than ever, with Africa engulfed in a financial, food and energy crises, it is indispensable for development partners to turn pledges into actions and meet their commitments fully.

38. On debt relief, progress has been achieved under the Heavily Indebted Poor Countries (HIPC) Initiative, and the Multilateral Debt Relief Initiative, under which eligible International Development Association, IMF and African Development Fund debt is cancelled when countries reach their enhanced HIPC completion point. As of May 2009, 20 African countries had reached their enhanced HIPC completion points, 9 remained in the interim period between the decision and completion points, and 4 eligible and participating countries had not yet reached their decision points. Before the HIPC Initiative, eligible countries were, on average, spending slightly more on debt service than on health and education combined. Now, spending on health, education and other social services is about five times the amount of debt service payments. In addition, the G-8 proposal to cancel multilateral debts is on track and, at present, 20 African countries have received Multilateral Debt Relief Initiative debt reductions from bilateral donors. As a result of debt relief, Africa's official debt to Governments and multilateral institutions declined from 62.8 per cent in 2000 to 20.6 per cent in 2008 (as a per cent of GDP).

Trade liberalization and aid for trade

39. Africa remains a marginal player in global trade, accounting for only 2.7 per cent of world trade in 2007. African trade structure has also remained narrow in terms of products and destination of exports. Although over the last years the continent has been able to diversify its trading partners, namely through the increasing presence of China in Africa, trade is still being focused on traditional products. In the period 2005-2007, African exports to Asia grew by nearly 50 per cent, but about 78 per cent of those exports were fuels and mining products. Despite the intense efforts undertaken to conclude the Doha negotiations, the divergences persisted into 2008. These issues included improved agricultural market access from the EU, substantial reduction of domestic subsidies by the United States to its agricultural sector, and agricultural and industrial market access to advanced developing countries. Moreover, in a period of financial and economic turmoil the already difficult path towards economic liberalization under the Doha Round is

increasingly more complex. With world trade volumes likely to shrink by as much as 13 per cent in 2009 from 2008 levels, many Governments are embarking on protectionist measures, which do not allow other economies to benefit as much from a potential recovery. At the end of 2008, when the financial crisis reached its peak, OECD countries pledged to refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization measures that are inconsistent with stimulating exports. G-20 and G-8 countries reaffirmed the same commitment at their most recent summits in London and L'Aquila, Italy, respectively.

40. The past year witnessed an impetus in the implementation of the recommendations of the World Trade Organization Task Force on Aid for Trade (AfT). In 2008 an AfT road map was adopted with the objective to provide comprehensive analysis of the results of AfT programmes on national and subregional levels. An annotated version of the road map was presented in February 2009. Specifically on Africa, an African working group on AfT comprising AfDB, ECA and the World Trade Organization is spearheading implementation of this initiative at the continental level. The focus in 2008 was on monitoring and evaluation mechanisms and on identification and design of bankable projects at the regional level, according to the three main priority areas, namely, standards, infrastructure and trade facilitation. In 2007, Africa received 32 per cent of the global AfT in the amount of $7.14 billion. In the same year, AfDB allocated more than 90 per cent of its total sector allocable ODA to AfT. The World Trade Organization Second Global Review on Aid for Trade, which took place in July 2009, facilitated collective action to capitalize on the benefits of AfT.

South-South cooperation

41. Over the past years South-South cooperation has evolved as one of the most effective engines of Africa's growth. This cooperation is beginning to provide larger amounts of resources for development, particularly in the productive sectors and infrastructure. This dynamic has been captured, for instance, in the Doha Plan of Action, the Havana Programme of Action and the Marrakech Declaration on South-South Cooperation. In this context, countries such as China, India, Brazil, Turkey and the Gulf States have made notable contributions to Africa's development. China, principally, has played a variety of roles in Africa. Trade between China and Africa reached a record $107 billion in 2008, up 45.1 per cent in 2007. While accurate data are difficult to obtain, it is estimated that Chinese direct investment in Africa amounted to $6.6 billion in the period 2000-2006, and IMF estimates that ODA rose from about $310 million in the period 1989-1992 to an estimated $1 billion to $1.5 billion in the period 2004-2005.

42. India's trade and business relationship with Africa has also been growing rapidly in recent years. Trade between the two regions increased from $7 billion in 1997 to $70 billion in 2007. At the India-Africa Forum Summit, held in April 2008, both sides adopted the Delhi Declaration and the Africa-India Framework for Cooperation, which constitute a blueprint for cooperation. Brazil, with strong historic ties with the continent, has also increased its presence in Africa. Trade has grown from $10.4 billion in 2004 to $26 billion in 2008, and Brazil's national energy company has announced a massive expenditure plan for the period 2009-2013, reaching $174 billion. Brazil is also setting up a unique international university whose central objective is to recruit and train 2,500 African students

annually. At the last summit of the Brazil, Russia, India and China group, held in Russia in June 2009, these rapidly growing economies renewed their commitment to assist developing countries.

43. The Turkey-Africa Cooperation Summit, held in Istanbul in 2008, also marked Turkey's interest in developing relations with Africa. Trade with the region represented only $12 billion in 2007, but it is expected to reach $30 billion by 2010. Gulf States are also making significant investments in the continent. From 2007 until mid-2008, foreign direct investment in sub-Saharan Africa reached $15 billion. The trade from Africa to the Gulf is mainly of primary commodities, whereas oil, petroleum products and manufactured goods constitute the bulk of trade from the Gulf States to Africa.

C. United Nations

44. United Nations system support to Africa at the regional level is coordinated through the regional coordination mechanism, a framework for consultations aiming to fast-track programme implementation systemwide by the United Nations. Meetings are convened by ECA and held annually at its headquarters. The 9th meeting, held in October 2008, focused on results and outcomes in two main areas: progress made in enhancing coherence, coordination and cooperation among United Nations agencies, and progress made in deepening partnerships between the United Nations and African continental organizations (African Union Commission, AfDB and regional economic communities). At the 9th meeting, the African Union welcomed the alignment of the regional coordination mechanism thematic clusters with the programmes and activities of the African Union/NEPAD, but encouraged the United Nations agencies to put more effort into coordinating with the African Union Commission and to ensure the finalization of the alignment exercise.

45. In 2006, United Nations assistance to the continent was complemented with the adoption of the Ten-Year Capacity-Building Programme for the African Union. The Programme framework was conceived as the United Nations overall strategic framework for cooperation with the African Union. So far, all efforts are being made to align United Nations cluster activities in support of the African Union with the Ten-Year Capacity-Building Programme for the African Union, the strategic plans of the African Union Commission and the NEPAD secretariat, and relevant decisions of the African Union and regional economic communities and outcomes of African Union sectoral ministerial bodies. To address some of these challenges, the Secretary-General established in 2008 a high-level panel to consider how the United Nations can support African Union peacekeeping operations.

46. The third major initiative of the United Nations to support Africa's development is the MDG Africa Steering Group. On ODA volume to Africa, the Steering Group suggested that $72 billion a year is required to meet the Millennium Development Goals. This objective can be met by, first, fully implementing the pledge expressed at the G-8 summit in Gleneagles to double ODA to Africa and, second, with additional support from countries, such as China, that are not part of OECD, private foundations and innovative public-private partnerships. The Steering Group work with 10 initial countries on the "Gleneagles scenarios", based on the G-8 pledge to more than double aid to Africa, has shown that scaled-up aid can be absorbed and spent without compromising macroeconomic stability. The

recommendations put forward by the Steering Group were endorsed by eight multilateral institutions (AfDB, Islamic Development Bank, African Union Commission, European Commission, IMF, OECD, World Bank and the United Nations) and lead institutions were earmarked to follow through.

IV. Review of existing monitoring mechanisms

47. Monitoring is critical if international goals are to be attained. Too often in the past, Governments have convened high-level summits on development, adopted bold targets, and then failed to deliver. The need to adopt better monitoring and statistical tools has been expressed in several forums. For instance, the PARIS21 Task Team on Improved Support to Monitoring Development Goals was formed to identify specific actions to be taken at national and international levels that would improve statistics available for monitoring and managing development results. This led, in 2004, to the adoption of the Marrakech Action Plan for Statistics. In addition, in May 2009, OECD members adopted an action plan that also called for better monitoring of the commitments on aid volumes and aid effectiveness in the light of the financial crisis. Also, the Secretary-General, in his report of July 2009 on the world financial and economic crisis, recommended concerted action in improving monitoring mechanisms to ensure greater accountability of global public policy action and improving the capacity to detect and respond to global development emergencies.[1] In terms of scope, the existing monitoring mechanisms for Africa's development are either comprehensive or sector-specific.

48. The Africa Partnership Forum, established in November 2003, brings together African and OECD countries and other development partners and provides a broad platform to catalyse and support action on both sides of the partnerships in support of Africa's development. The Forum, which meets twice a year, is responsible for the monitoring of the delivery of commitments made by both sides of the Partnership. In addition to the Forum, the World Bank and IMF also publish annually the *Global Monitoring Report*, providing an overview of the status of implementation of the commitments. The *Mutual Review Of Development Effectiveness In Africa Report*, a joint United Nations-ECA and OECD exercise, compiled in close consultation with the NEPAD secretariat, also provides a comprehensive listing and review of implementation of development commitments.

49. The sector-specific monitoring mechanisms include the work undertaken by OECD to track progress in ODA flows and aid effectiveness; the Commitment to Development Index compiled by the Center for Global Development, the assessments carried out by the African Peer Review Mechanism and the Ibrahim Index of African Governance on issues of governance; the regular tracking executed by IMF and the World Bank on trade, the ease of doing business and other economic indicators, and the work developed by several United Nations agencies to track progress in attaining the Millennium Development Goals, which is presented in the annual *Millennium Development Goal Report*, and the annual *Millennium Development Goal Gap Task Force Report* or by the Development Cooperation Forum. All these exercises are undertaken in a fragmented way, however, without synergism between them.

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[1] A/CONF.214/4.

50. Over the last years civil society has also become involved. In the follow-up of all the pledges made to Africa in 2005, a South Africa-based NGO, African Monitor, was created to ensure that "promises on all sides would be implemented swiftly and effectively, in ways that make a real difference to real people". African Monitor has four core research and monitoring tools and publishes the bi-annual Development Support Monitor. Another monitoring mechanism is undertaken by Debt, AIDS, Trade in Africa (or DATA), an NGO founded in January 2002 in the United Kingdom. It publishes an annual report tracking progress in all dimensions of development (social, political and economic indicators). Finally, the Africa Progress Panel, chaired by former United Nations Secretary-General Kofi Annan, was created in 2008 to call attention to the need to deliver on the commitments, particularly the good governance and economic support that is imperative for achieving the Millennium Development Goals. These civil society-led initiatives tend to ensure transparency and the greatest autonomy of opinion, but they lack undisturbed access to the decision-making centres in international organizations.

51. Given the critical importance of meeting Africa's development needs and the myriad commitments made by the various stakeholders towards meeting these needs, monitoring the fulfilment of the commitments is of crucial saliency. However, there is no need for a new mechanism, but there is for an effective way to bring together the results of the various existing monitoring processes. Such a monitoring mechanism could build on existing United Nations and non-United Nations reviews and be based on the principles of thematic comprehensiveness, agent inclusiveness, political strength and legitimacy. The mechanism could monitor progress of all commitments in all areas relevant to Africa's development needs and account for important links between the different segments of development. The mechanism should involve an African Union-United Nations partnership to ensure regional legitimacy and international credibility. In order to set into motion this mechanism, consultations within the United Nations system will start in early 2010 in the context of the Inter-Agency Task Force on Africa.

V. Conclusions, recommendations and the way forward

52. The impact of the three crises affecting the continent should be assessed jointly rather than individually, and also taking into account their aggravation of the already existing structural problems of the continent. This report has shown that the crises occurred at a most inopportune time, when African economies were growing steadily, promising a path towards sustained development. In 2008, Africa took a step back in important key areas such as economic growth, agricultural development and poverty eradication, as well as in many other human development indicators.

53. The world financial and economic crisis presents a unique challenge to African countries, as their cash economies are heavily dependent on a small number of exports. African Governments have to take bolder steps to strengthen regional integration and diversify their exports in order to cope with the demands of the global economy. International partners' response to these crises must be made in consideration to the specific needs of the continent: trade and market access; access to adequate financing; capacity-building; debt sustainability; infrastructure development; and peace and security.

54. To mitigate the food crisis, there is a need for a re-thinking of trade policy in order to boost agricultural production around the world. Biofuel subsidies and export controls are not currently the focus of multilateral trade negotiations, but they must be addressed as part of an overall strategy to liberalize agricultural production. Development partners should honour their promises to reduce barriers to African products and should consider eliminating agricultural subsidies that distort global trade.

55. Development partners must lend strong support to addressing the problems of climate change, by investing in mitigation and adaptation towards the prevention of deforestation, and by increasing funding for renewable energy in Africa. As renewable energy, such as solar, wind and geothermal, is very viable in Africa, every effort should be made to move away from coal-based projects towards these sources. Development partners should take Africa's development needs into full consideration in the negotiations leading up to the United Nations Climate Change Conference.

56. Official development assistance, foreign direct investment and trade are key engines for growth in Africa. Hence, development partners need to take very serious steps to meet their pledge to raise aid flows to $66 billion (2008 prices) in 2010. They should also maintain the upward trend of foreign direct investment inflows to Africa.

57. China, India, Brazil, Turkey and the Gulf States have created greater opportunities for meeting Africa's development needs, particularly in the areas of infrastructure and trade. If Africa's development is to stay on track, it is crucial for both traditional and non-traditional donors to comply with agreed-upon principles of cooperation in the areas of aid, trade, development finance and debt sustainability.

58. Bad governance and poverty are interdependent. Despite progress made by many African countries in this area, there is still much room for improvement. The international community should assist African countries in the development of democratic institutions, along with working legal systems, and freedom of the press. There is, however, a fine balance between ownership, sustainability and partnership. Donors should support the endogenous mechanisms that might bring about internal change, rather than simply advocating universal democratic norms. The African Peer Review Mechanism should be supported and all African countries should rapidly take part in the process.

59. No one is more responsible for Africa's development than African people, States and institutions. Although some progress was seen in 2008 in trade liberalization and the ease of doing business, African States need to make progress towards achieving the agriculture target to allocate 10 per cent of national budgets to agriculture development and exceed in the 6 per cent agriculture sector growth target. On health, they have to take measures to spend 15 per cent of their budgets on health, as enshrined in the African Union Abuja Declaration.

United Nations

A/64/209

General Assembly

Distr.: General
31 July 2009

Original: English

Sixty-fourth session
Item 71 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Combating defamation of religions

Report of the Secretary General**

Summary

The present report is submitted in accordance with General Assembly resolution 63/171 and focuses on the implementation of the resolution, including on the possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world.

* A/64/150.

** The present report was submitted later than the indicated deadline in order to incorporate the latest available information on the subject matter.

09-43661 (E) 250809

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I. Introduction

1. In its resolution 63/171, the General Assembly noted with deep concern the serious instances of intolerance, discrimination and acts of violence based on religion or belief in many parts of the world, as well as the negative projection of certain religions in the media, and the introduction of measures specifically targeting persons with certain ethnic and religious backgrounds, particularly Muslim minorities, in the aftermath of the tragic events of 11 September 2001. Concern was expressed over the frequent and erroneous association of Islam with human rights violations and terrorism. The General Assembly strongly condemned all manifestations and acts of racism, racial discrimination, xenophobia and related intolerance and deplored the use of print, audio-visual and electronic media to incite acts of violence, xenophobia and discrimination against any religion, as well as the targeting of religious symbols. It emphasized that while everyone has the right to freedom of expression, the exercise of that right carried with it special duties and responsibilities.

2. In resolution 63/171, the General Assembly urged States to provide adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions and from incitement to religious hatred in general, and to ensure that all public officials respected people regardless of their religion or belief. It also called on States to exert the utmost efforts to ensure that religious places, sites, shrines and symbols were fully respected and protected. The Assembly further underscored the need to combat defamation of religions and incitement to religious hatred by harmonizing actions at the local, national, regional and international levels. In addition, it urged States to take all possible measures to promote tolerance and respect for all religions and beliefs, called upon the United Nations High Commissioner for Human Rights to encourage a dialogue among civilizations, and called on the international community to foster a global dialogue to promote a culture of tolerance and peace.

3. General Assembly resolution 63/171 was adopted by a vote of 85 to 50, with 42 abstentions, attesting to the diversity of views in the international community on the subject of the resolution entitled "Combating defamation of religions". The resolution was sponsored by Uganda on behalf of the Organization of the Islamic Conference, Belarus and the Bolivarian Republic of Venezuela. States opposing the adoption of the resolution voiced concern that the resolution could lead to a stifling of freedom of religion and freedom of expression or found the text to be too focused on a single religion. The sponsor, in an explanation of vote, indicated that all religions were covered by the text and that, although Islam was usually at the core of the acts described in the resolution, that did not preclude other religions from also being targeted. In the statements in favour of the resolution, reference was also made to the United Nations global counter-terrorism strategy.

4. Chapter I of the Plan of Action annexed to General Assembly resolution 60/288, entitled "The United Nations Global Counter-Terrorism Strategy", examined measures to address the conditions conducive to the spread of terrorism. In paragraph 2 of that chapter, States Members of the United Nations resolved to continue to arrange, under the auspices of the United Nations, initiatives and programmes to promote dialogue, tolerance and understanding among civilizations, cultures, peoples and religions, and to promote mutual respect for and prevent the defamation of religions, religious values, beliefs and cultures. The resolution was

adopted by consensus. In its resolution 62/272, the General Assembly reaffirmed resolution 60/288 and was also adopted by consensus.

II. Implementation of resolutions on defamation of religions

5. In paragraph 24 of resolution 63/171, the General Assembly requested the Secretary-General to submit a report at its sixty-fourth session on the implementation of the resolution, including on the possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world.

6. In its resolution 10/22, entitled "Combating defamation of religions", the Human Rights Council also requested the High Commissioner for Human Rights to report on the implementation of that resolution, including on the possible correlation between defamation of religions and the upsurge in incitement, intolerance and hatred in many parts of the world.

7. At the sixty-third session of the General Assembly, the Secretary-General submitted a report (A/63/365) in accordance with resolution 62/154. In the report, the Secretary-General focused on measures and activities undertaken by States, United Nations bodies, regional organizations, national human rights institutions and non-governmental organizations with regard to combating defamation of religions.

8. In implementation of Human Rights Council resolution 10/22, notes verbales were sent to Member States, United Nations Funds, Programmes and specialized agencies, international and regional organizations to solicit information on measures and activities undertaken to combat defamation of religions by 30 July 2009. Contributions received will be reflected in the report to the Human Rights Council at its thirteenth session.

9. To avoid duplicate reporting to the General Assembly at its sixty-fourth session and the Human Rights Council at its thirteenth session, the present report recalls the relevant international legal framework and focuses on implementation of resolution 63/171 by the Office of the United Nations High Commissioner for Human Rights, as well as developments at the level of the United Nations human rights mechanisms and treaty bodies, which, although they may not address religious defamation directly, have a bearing on certain aspects of the phenomenon described as defamation of religions in resolution 63/171.

10. While the scope of the present report is limited to resolution 63/171, attention is drawn to previous reports of the Secretary-General, the High Commissioner for Human Rights and the Special Rapporteurs, on issues related to defamation of religions, incitement to racial and religious hatred and violence, the promotion of tolerance, and freedom of religion or belief. Those reports, prepared at the request of the General Assembly and the Human Rights Council, provide an additional context and useful background for the present one. Specific reference is made to the Study of the United Nations High Commissioner for Human Rights compiling existing legislations and jurisprudence concerning defamation of and contempt for religions (A/HRC/9/25), submitted to the Human Rights Council at its ninth session.

11. The report on combating defamation of religions, submitted by the High Commissioner for Human Rights to the Human Rights Council at its ninth session

(A/HRC/9/7) contained contributions from nine Member States, one regional organization and five non-governmental organizations on various aspects of defamation of religions. Most contributions reflected concern about the growing trend towards the negative portrayal of religion in the media and in the political discourse, as well as over policies and practices that seem to target people because of their religion. The High Commissioner for Human Rights, in paragraph 3 of her report at the third substantive session of the Preparatory Committee for the Durban Review Conference (A/CONF.211/PC.4/5), confirmed that religious minorities had been frequent targets of abusive, violent and repetitive criticism against their group, often as a result of entrenched stereotypical attitudes, and that that had deepened discrimination against them.

12. The information available is, nevertheless, insufficient to provide a comprehensive, holistic and reliable picture of acts of or incidents of incitement to religious hatred, discrimination based on religion or belief, or violence perpetrated against members of religious or belief communities in all parts of the world. The difficulty in obtaining dependable information is complicated by the pernicious nature of discrimination on religious grounds. As a cross-cutting human rights violation, it typically manifests itself in conjunction with other human rights violations. The challenges in measuring incitement, discrimination or violence against persons of a certain religion or belief are further compounded by the fact that acts of incitement, discrimination or violence based on religious intolerance are frequently not reported to authorities, or, when they are, not characterized as such. The theoretical and practical analysis of that correlation is included in the various sections of the present report.

III. Legal framework

13. The Charter of the United Nations, which entered into force in 1945, sets out to promote universal respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. The Universal Declaration of Human Rights, adopted in 1948, proclaims that all human beings are born free and equal in dignity and rights. It outlines human rights and emphasizes that everyone is entitled to all the rights and freedoms, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

14. Human rights law has therefore been focused on the rights of human beings. Recognizing that, in some countries, the notion of defamation of religions is included in national law, efforts have been made to consider the impact of defamation of religions on the realization of human rights.

15. The permissible limitations to freedom of expression are one of the main features of the discourse on defamation of religions. According to article 19 of the International Covenant on Civil and Political Rights,[1] everyone shall have the right to freedom of expression. The exercise of this right, however, carries with it special duties and responsibilities. It may therefore be subject to certain restrictions as provided by law and necessary for respect of the rights or reputations of others and for the protection of national security, public order, public health or morals.

[1] General Assembly resolution 2200 A (XXI).

16. According to article 20, paragraph 2, of the International Covenant on Civil and Political Rights, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Article 20, paragraph 2, thus protects individuals and groups belonging to a religion or holding a certain belief against the advocacy of hatred. It does not, however, protect religions, belief systems, opinions, or institutions from scrutiny, criticism or defamation.

17. With respect to hate speech, article 4 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination[2] calls on States parties to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof. The numerous reservations, declarations and interpretations made by States parties, many of which subsist despite constant urging by the Committee on the Elimination of Racial Discrimination to remove them or narrow their scope, raise the question as to whether the prohibition of hate speech as expressed in the Convention is a rule of treaty law or represents customary international law on the basis of its intrinsic relationship to the norm of non-discrimination.

18. In its general recommendation XV (42),[3] the Committee on the Elimination of Racial Discrimination expressed the opinion that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion or expression, given the savings clause that the obligations of article 4 should be fulfilled with due regard to the principles embodied in article 19 of the Universal Declaration of Human Rights.

19. In paragraph 11 of resolution 63/171, the General Assembly reaffirmed that general recommendation XV (42) is equally applicable to the question of incitement to religious hatred. However, reports by Special Rapporteurs have cautioned against confusion between a racist statement and an act of defamation of religion since the elements that constitute a racist statement are not the same as those that constitute a statement defaming a religion as such (A/HRC/2/3, para. 49, and A/HRC/12/38, para. 37). It was also argued that the legal measures, and in particular the criminal measures, adopted by national legal systems to fight racism may not necessarily be applicable to defamation of religions.

IV. Office of the United Nations High Commissioner for Human Rights

20. The Office of the United Nations High Commissioner for Human Rights organized an expert consultation at Geneva, on 2 and 3 October 2008 on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights. It was entitled "Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence" and the participants

[2] General Assembly resolution 2106 (XX), annex.

[3] See *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), chap. VIII, sect. B.

included 12 experts and over 200 observers, including from Governments, United Nations agencies, regional organizations, the media and non-governmental organizations.

21. In her opening remarks (see A/HRC/10/31/Add.3, para. 3), the High Commissioner for Human Rights emphasized that freedom of expression and freedom of religion were not contradictory but interdependent. According to the High Commissioner, international law as well as the jurisprudence of most national courts allowed for the legitimate restriction of well-defined and narrowly limited classes of speech to safeguard against transgressions such as the hate messages transmitted in Rwanda by Radio Mille Collines. While such extreme cases were clear, the High Commissioner said that problems of interpretation lay in less clear-cut situations. She called for a thorough assessment of the circumstances in each case and for any decisions to restrict speech to be guided by well-defined criteria and in accordance with international standards.

V. Durban Review Conference

22. The Durban Review process undertook, inter alia, to review progress and assess implementation of the Durban Declaration and Programme of Action[4] by all stakeholders at the national, regional and international levels, including the assessment of contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance. The Durban Review process, which culminated in the adoption of the Outcome Document of the Durban Review Conference on 24 April 2009,[5] makes no reference to the concept of defamation of religions.

23. However, paragraph 12 of the Outcome Document deplored the global rise and number of incidents of racial or religious intolerance and violence, including Islamophobia, anti-Semitism, Christianophobia and anti-Arabism manifested in particular by the derogatory stereotyping and stigmatization of persons based on their religion or belief. The Outcome Document further urged all Member States to implement paragraph 150 of the Durban Programme of Action, which called upon States, in opposing all forms of racism, to recognize the need to counter anti-Semitism, anti-Arabism and Islamophobia worldwide, and urged all States to take effective measures to prevent the emergence of movements based on racism and discriminatory ideas concerning these communities.

24. Paragraph 68 of the Outcome Document expressed concern about the rise in recent years of acts of incitement to hatred, which targeted and severely affected racial and religious communities and persons belonging to racial and religious minorities, whether involving the use of print, audio-visual or electronic media or any other means, and emanating from a variety of sources. Paragraph 69 resolved, as stipulated in article 20 of the International Covenant on Civil and Political Rights, to fully and effectively prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and implement it through all necessary legislative, policy and judicial measures.

[4] See A/CONF.189/12 and Corr.1, chap. I.

[5] See A/CONF.211/L.1, draft report of the Conference.

25. Against this background, paragraph 134 of the Outcome Document took note of the proposal of the Office of the High Commissioner for Human Rights, in cooperation with regional stakeholders in all parts of the world, to organize, in the light of the OHCHR Expert Seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights, a series of expert workshops. These workshops would serve to attain a better understanding of the legislative patterns, judicial practices and national policies in the different regions of the world with regard to the concept of incitement to hatred, in order to assess the level of implementation of the prohibition of incitement, as stipulated in article 20 of the International Covenant on Civil and Political Rights.

VI. United Nations human rights treaty bodies

26. While relevant cases are currently being considered by several treaty bodies, no determinations pertinent to incitement to religious hatred were made on individual petitions by any treaty bodies since the Study of the United Nations High Commissioner for Human Rights compiling jurisprudence concerning defamation of and contempt for religions, submitted to the Human Rights Council at its ninth session (A/HRC/9/25).

27. At its ninety-fourth session, held from 13 to 31 October 2008, the Human Rights Committee decided to revise its General Comment on article 19 of the International Covenant on Civil and Political Rights on freedom of expression. A first reading of the draft general comment by the Human Rights Committee is scheduled to take place in October 2009.

28. In its examination of periodic reports, the Human Rights Committee has called on States parties to the International Covenant on Civil and Political Rights to vigorously combat any advocacy of racial or religious hatred, including political hate speech, by intensifying public information and awareness-raising campaigns and ensuring the strict application by judges, prosecutors and the police of criminal law provisions punishing incitement to racial or religious hatred.

29. Espousing the view that discrimination based exclusively on religious grounds does not explicitly fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination has searched for an "ethnic" or other connection or element of intersectionality between racial and religious discrimination before it regarded its mandate as engaged.

30. The "intersection" was further examined in two cases in 2007, both involving allegations of hate speech. The case of *P.S.N. v. Denmark* (2007) concerned alleged violations of articles 2, paragraph 1 (d), 4 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination through statements published on a website by a Member of Parliament against immigration and Muslims, under the headline "Articles no one dares to publish". The opinions expressed were reiterated in an interview given to a newspaper, and some had been previously published in a book. The petitioner filed three complaints under the Danish Criminal Code, section 266b of which prohibits racial statements, on the grounds that the website statements targeted a specific group — Muslims — were degrading and propagandistic, and were published to a large audience. Analogous complaints related to the book and the interview.

31. The State party argued against admissibility in that the case fell outside the scope of article 1 of the Convention in referring to Muslims, while acknowledging that "it is possible to argue to a certain extent that the statements refer to second-generation immigrants and set up a conflict between 'the Danes' and them, thereby falling to some degree within the scope of the Convention". The petitioner on the other hand contended that "Islamophobia, just like attacks against Jews, has manifested itself as a form of racism in many European countries". Hatred, it was claimed, had been stirred up against peoples of Arab and Muslim background, and "culture and religion are connected in Islam".

32. In its admissibility decision, the Committee observed that "the impugned statements specifically refer to the Koran, to Islam and to Muslims in general", without any reference to the five grounds set out in article 1 of the Convention. Further, while the elements in the case file did not allow the Committee to ascertain the intention of the statements, "it remains that no specific national or ethnic groups were directly targeted", and that "Muslims currently living in the State party are of heterogeneous origin". The Committee recognized "the importance of the interface between race and religion" and stated that "it would be competent to consider a claim of 'double' discrimination on the basis of religion and another ground specifically provided for in article 1", which was not the case with the current petition. The petition according to the Committee was based on religion alone, and "Islam is not a religion practised solely by a particular group". The communication was therefore declared inadmissible. In the case of *A.W.R.A.P. v. Denmark* (2007), the Committee declared inadmissible a communication on similar grounds to its decision in *P.S.N. v. Denmark*.

33. Many discriminatory practices described in General Assembly resolution 63/171, including incitement, stereotyping, profiling, stigmatization, and legitimation of discrimination, are nevertheless accounted for in the Convention on the Elimination of All Forms of Racial Discrimination practice. The Committee has made numerous references in its concluding observations to phenomena such as Islamophobia, including reports thereof following the attacks of 11 September 2001, discrimination against Jews and Sikhs, discrimination against indigenous religions, and desecration of sacred sites, and other cases where it has found an overlap between religion and ethnicity.

VII. United Nations special procedures

34. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, submitted his latest report to the Human Rights Council at its twelfth session (A/HRC/12/38), pursuant to resolution 10/22, in which the Human Rights Council requested him to report on all manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights by their followers, to the Council at its twelfth session.

35. In his report, the Special Rapporteur recalled the recommendation of his predecessor, Doudou Diène (see A/HRC/9/12, para. 65), that the Human Rights Council should "encourage a shift away from the sociological concept of the defamation of religions towards the legal norm of non-incitement to national, racial or religious hatred, on the basis of the legal provisions laid down in international

human rights instruments, in particular articles 18 to 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination".

36. In addition, the Special Rapporteur expressed the view (A/HRC/12/38, para. 45) that the agreement reached in the Outcome Document of the Durban Review Conference constituted a fine balance in reaffirming the importance of freedom of expression and highlighting the need to curb hate speech. He therefore recommended that that consensual document be used as a reference in the way forward when approaching difficult questions such as that of incitement to racial or religious hatred. He particularly recommended that policymakers rely on the robust and adequate language of the Outcome Document and implement it domestically.

37. The Special Rapporteur made a distinction (ibid., para. 46) between the following four concerns: (a) intolerant mentalities which do not yet constitute human rights violations, but may eventually lead to such violations; (b) advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence and which is prohibited in international human rights law; (c) discrimination against members of religious or belief communities, which is also clearly prohibited by international human rights standards and which adversely affects the enjoyment of civil, cultural, economic, political and social rights; and (d) acts of violence perpetrated against members of religious or belief communities, which constitute a blatant human rights violation, for example with regard to the right to security of the person or ultimately to the right to life.

38. The Special Rapporteur recalled (ibid., para. 48) that existing international standards already addressed racial discrimination and discrimination based on religion or belief, as well as incitement to racial or religious hatred. In this regard, he highlighted that, as of June 2009, a total of 164 States had ratified the International Covenant on Civil and Political Rights and that there were 173 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination. He called on States which had not yet ratified those international instruments to consider doing so.

39. The Special Rapporteur highlighted the fact (ibid., para. 49) that while the obligation to prohibit discrimination and incitement to racial or religious hatred was unambiguous under international human rights law, it was only one among a number of actions that needed to be taken to fully guarantee the right to equal treatment and to fight racism and all forms of discrimination. He stated that States had a central obligation to adopt measures to foster tolerance and respect for cultural diversity, including religious diversity. Only by implementing that wide array of actions would States be able to secure long-term defences against the insidious implications of hate speech.

40. Finally, the Special Rapporteur expressed serious concern (ibid., para. 50) about cases of incitement to racial or religious hatred and called on States to address such cases promptly within the existing international human rights framework. He also recalled the obligation of States under existing international human rights standards to protect members of religious or belief communities from violations of their right to freedom of religion or belief.

41. The Special Rapporteur on freedom of religion or belief, Asma Jahangir, in her report to the Human Rights Council at its tenth session (A/HRC/10/8), highlighted continued reports of religious intolerance and acts of violence against members of certain religious or belief communities. She noted that, while peaceful expressions of opinions and ideas should always be tolerated, the use of stereotypes and labelling that insulted deep-rooted religious feelings did not contribute to the creation of an environment conducive to constructive and peaceful dialogue among different communities. The Special Rapporteur also reminded States of their obligation to act against advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.

42. The Special Rapporteur on freedom of religion or belief further noted that, although in some cases intolerant behaviour did not constitute a human rights violation, it still gave rise to religious polarization and disturbed social cohesion. In this respect, she stressed that each particular case ought to be adjudicated on its own merits and emphasized the vital role of the judiciary in providing a means of legal redress to victims of human rights violations. She affirmed that more consultation was needed and recommended that regional workshops be organized to explore this topic at the grass-roots level. She also suggested that the Human Rights Committee could revisit its general comment No. 11 (1983) on article 20 of the International Covenant on Civil and Political Rights.

43. In previous reports (A/62/280 and Corr.1, para. 76, and A/HRC/7/10/Add.3, para. 73), the Special Rapporteur on freedom of religion or belief argued that the full implementation of the protection of individuals against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence according to article 20, paragraph 2, of the International Covenant on Civil and Political Rights presented a useful alternative to blasphemy laws.

44. The independent expert on minority issues, Gay McDougall, in her 2006 report to the Commission on Human Rights (E/CN.4/2006/74) reported that minorities in all regions of the world continued to face serious threats, discrimination and racism. In addition, she highlighted the fact that minority communities faced new challenges, including counter-terrorism legislation, policies and practices that presented the risk of unjustly impeding or even violating minority rights. She also expressed concern that important debates about religion, social inclusion, and identity often assumed a negative tone not conducive to social cohesion or harmony.

45. According to the independent expert, anti-discrimination, while a key element, was not sufficient in itself to guarantee fully minority rights, as such rights went beyond anti-discrimination to address the issues of those who may seek to promote and preserve their distinct identity. Minority rights, she asserted, were about recognizing that, owing to their minority status and distinct identity, some groups were disadvantaged and at times targeted, and that those communities needed special protection and empowerment. In this vein, she called on all States to seek to realize the goal of equality in diversity, de jure and de facto.

46. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, issued a joint statement in Geneva on 22 April 2009 identifying challenges with regard to the dissemination of expressions which offend

certain believers (see A/HRC/12/38, paras. 33-42). Although this phenomenon historically touched all regions of the world and various religions and beliefs, in their assessment the events of 11 September 2001 had exacerbated tensions in inter-community relations. In that context, the three mandate holders suggested that a clear distinction be made between three types of expression: (a) expressions that constitute an offence under international law; (b) expressions that are not criminally punishable but may justify a civil suit; and (c) expressions that do not give rise to criminal or civil sanctions but still raise concern in terms of tolerance, civility and respect for the religion or beliefs of others.

47. The Special Rapporteurs called for anchoring the debate in the existing international legal framework provided by the International Covenant for Civil and Political Rights — more specifically its articles 19 and 20. In addition to legal responses to advocacy of hatred and violence, they stressed the need to tackle the root causes of intolerance through a broad set of policy measures, for example in the areas of intercultural and interreligious dialogue or education for tolerance and diversity.

VIII. Conclusion

48. The notion of defamation of religions has an impact on the realization of human rights. Since the permissible limitations to freedom of expression are one of the salient features of the discourse on defamation of religions, attention is drawn to articles 19 and 20 of the International Covenant on Civil and Political Rights, as well as article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

49. Treaty bodies and special procedures have reported about serious instances of intolerance, discrimination and acts of violence based on religion or belief as described in General Assembly resolution 63/171 as defamation of religions, such as the derogatory stereotyping and stigmatization of persons based on their religion or belief, and the negative projection and targeting of certain religions and religious symbols. In this regard, they have recommended that strong emphasis be put on the implementation of the core obligations of States relating to the protection of individuals and groups of individuals against violations of their rights incurred by hate speech.

50. Many discriminatory practices referred to in General Assembly resolution 63/171, including dissemination, incitement, stereotyping, profiling, stigmatization and legitimation of discrimination, are also within the purview of the Convention on the Elimination of All Forms of Racial Discrimination. The Committee has made numerous references in its concluding observations to phenomena such as Islamophobia, including reports thereof following the attacks of 11 September 2001, discrimination against Jews and Sikhs, discrimination against indigenous religions, and desecration of sacred sites, and other cases where it has sensed an overlap between religion and ethnicity.

51. As underlined by the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the ultimate goal is to find the most effective ways through which to protect

individuals against advocacy of hatred and violence by others. Hate speech is but a symptom, an external manifestation of something much more profound which is intolerance and bigotry. Legal responses, such as restrictions on freedom of expression alone, are far from being sufficient to bring about real changes in mindsets, perceptions and discourse. In order to tackle the root causes of intolerance, a much broader set of policy measures needs to be addressed covering the areas of intercultural dialogue as well as education for tolerance and diversity.